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HOUSE BILL 261

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mimi Stewart

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

**RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF
THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE AND EXTEND
BENEFITS, DECREASE EMPLOYERS' CONTRIBUTIONS AND ELIMINATE
CERTAIN RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969,
Chapter 213, Section 1, as amended by Laws 2000, Chapter 3,
Section 1 and also by Laws 2000, Chapter 7, Section 1) is
amended to read:**

**"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT
GENERALLY. --**

**A. All benefits provided herein are payable from
the unemployment compensation fund. All benefits shall be paid**

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1 in accordance with [~~such regulations as~~] rules prescribed by
2 the secretary [~~may prescribe~~] through employment offices or
3 other agencies as the secretary [~~may~~] approves by general rule
4 [~~approve~~].

5 B. Weekly benefits shall be as follows:

6 (1) an individual's "weekly benefit amount" is
7 an amount equal to [~~one twenty-sixth of the total wages~~] fifty-
8 two and one-half percent of the average weekly wage for insured
9 work paid to [~~him~~] the individual in that quarter of [~~his~~] the
10 individual's base period in which total wages were highest. No
11 benefit as so computed may be less than ten percent or more
12 than fifty-two and one-half percent of the state's average
13 weekly wage for all insured work. The state's average weekly
14 wage shall be computed from all wages reported to the
15 department from employing units in accordance with
16 [~~regulations~~] rules of the secretary for the period ending June
17 30 of each calendar year divided by the total number of covered
18 employees divided by fifty-two, effective for the benefit years
19 commencing on or after the first Sunday of the following
20 calendar year. [~~Any such~~] An individual is not eligible to
21 receive benefits unless [~~he~~] the individual has wages in at
22 least two quarters of [~~his~~] that individual's base period. For
23 the purposes of this subsection, "total wages" means all
24 remuneration for insured work, including commissions and
25 bonuses and the cash value of all remuneration in a medium

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1 other than cash;

2 (2) ~~[each]~~ an eligible individual who is
3 unemployed in any week during which ~~[he]~~ the individual is in a
4 continued claims status shall be paid, with respect to ~~[such]~~
5 the week, a benefit in an amount equal to ~~[his]~~ the
6 individual's weekly benefit amount, less that part of the
7 wages, if any, or earnings from self-employment, payable to
8 ~~[him]~~ the individual with respect to such week ~~[which]~~ that is
9 in excess of one-fifth of ~~[his]~~ the individual's weekly benefit
10 amount. For purposes of this subsection only, "wages" includes
11 all remuneration for services actually performed in ~~[any]~~ a
12 week for which benefits are claimed, vacation pay for ~~[any]~~ a
13 period for which the individual has a definite return-to-work
14 date, wages in lieu of notice and back pay for loss of
15 employment but does not include payments through a court for
16 time spent in jury service;

17 (3) notwithstanding any other provision of
18 this section, ~~[each]~~ an eligible individual who, pursuant to a
19 plan financed in whole or in part by a base-period employer of
20 ~~[such]~~ the individual, is receiving a governmental or other
21 pension, retirement pay, annuity or any other similar periodic
22 payment that is based on the previous work of ~~[such]~~ the
23 individual and who is unemployed with respect to any week
24 ending subsequent to April 9, 1981 shall be paid with respect
25 to ~~[such]~~ the week, in accordance with ~~[regulations]~~ rules

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1 prescribed by the secretary, compensation equal to ~~[his]~~ the
2 individual's weekly benefit amount reduced, but not below zero,
3 by the prorated amount of ~~[such]~~ the pension, retirement pay,
4 annuity or other similar periodic payment that exceeds the
5 percentage contributed to the plan by the eligible individual.
6 The maximum benefit amount payable to ~~[such]~~ the eligible
7 individual shall be an amount not more than twenty-six times
8 his reduced weekly benefit amount. If payments referred to in
9 this section are being received by ~~[any]~~ an individual under
10 the federal Social Security Act, the division shall take into
11 account the individual's contribution and make no reduction in
12 the weekly benefit amount;

13 (4) in the case of a lump-sum payment of a
14 pension, retirement or retired pay, annuity or other similar
15 payment by a base-period employer that is based on the previous
16 work of ~~[such]~~ the individual, ~~[such]~~ the payment shall be
17 allocated, in accordance with ~~[regulations]~~ rules prescribed by
18 the secretary, and shall reduce the amount of unemployment
19 compensation paid, but not below zero, in accordance with
20 Paragraph (3) of this subsection; and

21 (5) the retroactive payment of a pension,
22 retirement or retired pay, annuity or any other similar
23 periodic payment as provided in Paragraphs (3) and (4) of this
24 subsection attributable to weeks during which an individual has
25 claimed or has been paid unemployment compensation shall be

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1 allocated to [~~such~~] those weeks and shall reduce the amount of
2 unemployment compensation for [~~such~~] those weeks, but not below
3 zero, by an amount equal to the prorated amount of [~~such~~] the
4 pension. Any overpayment of unemployment compensation benefits
5 resulting from the application of the provisions of this
6 paragraph shall be recovered from the claimant in accordance
7 with the provisions of Section 51-1-38 NMSA 1978.

8 C. An individual otherwise eligible for benefits
9 shall be paid for each week of unemployment, in addition to the
10 amount payable under Subsection B of this section, the sum of
11 fifteen dollars (\$15.00) for each unemancipated child, up to a
12 maximum of four and subject to the maximum stated in Subsection
13 D of this section, of the individual who is in fact dependent
14 upon and wholly or mainly supported by the individual and is:

15 (1) under the age of eighteen;

16 (2) under the age of eighteen and in the
17 individual's custody pending the adjudication of a petition
18 filed by the individual for the adoption of the child in a
19 court of competent jurisdiction; or

20 (3) under the age of eighteen and for whom the
21 individual is under a decree or order from a court of competent
22 jurisdiction required to contribute to the child's support and
23 for whom no other person is receiving allowances under the
24 Unemployment Compensation Law if the child is domiciled within
25 the United States or its territories or possessions, the

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1 payment to be withheld and paid pursuant to Section 51-1-37.1
2 NMSA 1978.

3 D. Dependency benefits shall not exceed fifty
4 percent of the individual's weekly benefit rate. The amount of
5 dependency benefits determined as of the beginning of an
6 individual's benefit year shall not be reduced for the duration
7 of the benefit year, but this provision does not prevent the
8 transfer of dependents' benefits from one spouse to another in
9 accordance with this subsection. If both the husband and wife
10 receive benefits with respect to a week of unemployment, only
11 one of them is entitled to a dependency allowance with respect
12 to a child. The division shall prescribe standards as to who
13 may receive a dependency allowance when both the husband and
14 wife are eligible to receive unemployment compensation
15 benefits. Dependency benefits shall not be paid unless the
16 individual submits documentation satisfactory to the division
17 establishing the existence of the claimed dependent. If the
18 provisions of this subsection are satisfied, an otherwise
19 eligible individual who has been appointed guardian of a
20 dependent child by a court of competent jurisdiction shall be
21 paid dependency benefits.

22 [C.—Any] E. An otherwise eligible individual is
23 entitled during any benefit year to a total amount of benefits
24 equal to whichever is the lesser of twenty-six times [his] the
25 individual's weekly benefit amount, plus any dependency benefit

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1 amount, or sixty percent of [~~his~~] the individual's wages for
2 insured work paid during [~~his~~] the individual's base period.

3 [~~D.—Any~~] F. A benefit as determined in Subsection
4 B or C of this section, if not a multiple of one dollar
5 (\$1.00), shall be rounded to the next lower multiple of one
6 dollar (\$1.00).

7 [~~E.—~~] G. The secretary may prescribe [~~regulations~~]
8 rules to provide for the payment of benefits that are due and
9 payable to the legal representative, dependents, relatives or
10 next of kin of claimants since deceased. These [~~regulations~~]
11 rules need not conform with the laws governing successions, and
12 the payment shall be deemed a valid payment to the same extent
13 as if made under a formal administration of the succession of
14 the claimant.

15 [~~F.—~~] H. The division, on its own initiative, may
16 reconsider a monetary determination whenever it is determined
17 that an error in computation or identity has occurred or that
18 wages of the claimant pertinent to such determination but not
19 considered have been newly discovered or that the benefits have
20 been allowed or denied on the basis of misrepresentation of
21 fact, but no redetermination shall be made after one year from
22 the date of the original monetary determination. Notice of a
23 redetermination shall be given to all interested parties and
24 shall be subject to an appeal in the same manner as the
25 original determination. In the event that an appeal involving

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1 an original monetary determination is pending at the time a
2 redetermination is issued, the appeal, unless withdrawn, shall
3 be treated as an appeal from [~~such~~] redetermination. "

4 Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969,
5 Chapter 213, Section 2, as amended by Laws 2000, Chapter 3,
6 Section 2 and also by Laws 2000, Chapter 7, Section 2) is
7 amended to read:

8 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS. --

9 A. An unemployed individual shall be eligible to
10 receive benefits with respect to any week only if [~~he~~] the
11 individual:

12 (1) has made a claim for benefits with respect
13 to such week in accordance with such [~~regulations~~] rules as the
14 secretary may prescribe;

15 (2) has registered for work at, and thereafter
16 continued to report at, an employment office in accordance with
17 such [~~regulations~~] rules as the secretary may prescribe, except
18 that the secretary may, by [~~regulation~~] rule, waive or alter
19 either or both of the requirements of this paragraph as to
20 individuals attached to regular jobs and as to such other types
21 of cases or situations with respect to which [~~he~~] the secretary
22 finds that compliance with such requirements would be
23 oppressive or would be inconsistent with the purposes of the
24 Unemployment Compensation Law. No such [~~regulation~~] rule shall
25 conflict with Subsection A of Section 51-1-4 NMSA 1978;

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1 (3) is able to work and is available for work
2 and is actively seeking permanent [~~and substantially~~] full-time
3 work or part-time work in accordance with Subsection I of
4 Section 51-1-42 NMSA 1978 and in accordance with the terms,
5 conditions and hours common in the occupation or business in
6 which the individual is seeking work, except that the secretary
7 may, by [~~regulation~~] rule, waive this requirement for
8 individuals who are on temporary layoff status from their
9 regular employment with an assurance from their employers that
10 the layoff shall not exceed four weeks or who have an express
11 offer in writing of substantially full-time work that will
12 begin within a period not exceeding four weeks;

13 (4) has been unemployed for a waiting period
14 of one week. [~~No~~] A week shall not be counted as a week of
15 unemployment for the purposes of this paragraph:

16 (a) unless it occurs within the benefit
17 year that includes the week with respect to which [~~he~~] the
18 individual claims payment of benefits;

19 (b) if benefits have been paid with
20 respect thereto; and

21 (c) unless the individual was eligible
22 for benefits with respect thereto as provided in this section
23 and Section 51-1-7 NMSA 1978, except for the requirements of
24 this subsection and of Subsection [~~E~~] D of Section 51-1-7 NMSA
25 1978;

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1 (5) has been paid wages in at least two
2 quarters of [~~his~~] the individual's base period;

3 (6) has reported to an office of the division
4 in accordance with the [~~regulations~~] rules of the secretary for
5 the purpose of an examination and review of the individual's
6 availability for and search for work, for employment
7 counseling, referral and placement and for participation in a
8 job finding or employability training and development program.
9 [~~No~~] An individual shall not be denied benefits under this
10 section for any week that [~~he~~] the individual is participating
11 in a job finding or employability training and development
12 program; and

13 (7) participates in reemployment services,
14 such as job search assistance services, if the division
15 determines that the individual is likely to exhaust regular
16 benefits and need reemployment services pursuant to a profiling
17 system established by the division, unless the division
18 determines that:

19 (a) the individual has completed such
20 services; or

21 (b) there is justifiable cause for the
22 individual's failure to participate in the services.

23 B. A benefit year as provided in Section 51-1-4
24 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
25 established; provided [~~no~~] an individual may not receive

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1 benefits in a benefit year unless, subsequent to the beginning
2 of the immediately preceding benefit year during which [~~he~~] the
3 individual received benefits, [~~he~~] the individual performed
4 service in "employment", as defined in Subsection F of Section
5 51-1-42 NMSA 1978, and earned remuneration for such service in
6 an amount equal to at least five times [~~his~~] the individual's
7 weekly benefit amount.

8 C. Benefits based on service in employment defined
9 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
10 51-1-43 NMSA 1978 are to be paid in the same amount, on the
11 same terms and subject to the same conditions as compensation
12 payable on the basis of other services subject to the
13 Unemployment Compensation Law; except that:

14 (1) benefits based on services performed in an
15 instructional, research or principal administrative capacity
16 for an educational institution shall not be paid for any week
17 of unemployment commencing during the period between two
18 successive academic years or terms or, when an agreement
19 provides for a similar period between two regular but not
20 successive terms, during such period or during a period of paid
21 sabbatical leave provided for in the individual's contract, to
22 any individual if [~~such~~] the individual performs such services
23 in the first of such academic years or terms and if there is a
24 contract or a reasonable assurance that [~~such~~] the individual
25 will perform services in any such capacity for any educational

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1 institution in the second of such academic years or terms;

2 (2) benefits based on services performed for
3 an educational institution other than in an instructional,
4 research or principal administrative capacity shall not be paid
5 for any week of unemployment commencing during a period between
6 two successive academic years or terms if [~~such~~] the services
7 are performed in the first of such academic years or terms and
8 there is a reasonable assurance that [~~such~~] the individual will
9 perform services for any educational institution in the second
10 of such academic years or terms. If compensation is denied to
11 [~~any~~] an individual under this paragraph and the individual was
12 not offered an opportunity to perform such services for the
13 educational institution for the second of such academic years
14 or terms, the individual shall be entitled to a retroactive
15 payment of benefits for each week for which the individual
16 filed a claim and certified for benefits in accordance with the
17 [~~regulations~~] rules of the division and for which benefits were
18 denied solely by reason of this paragraph;

19 (3) benefits shall be denied to any individual
20 for any week that commences during an established and customary
21 vacation period or holiday recess if [~~such~~] the individual
22 performs any services described in Paragraphs (1) and (2) of
23 this subsection in the period immediately before such period of
24 vacation or holiday recess and there is a reasonable assurance
25 that [~~such~~] the individual will perform any such services in

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1 the period immediately following such vacation period or
2 holiday recess;

3 (4) benefits shall not be payable on the basis
4 of services specified in Paragraphs (1) and (2) of this
5 subsection during the periods specified in Paragraphs (1), (2)
6 and (3) of this subsection to any individual who performed such
7 services in or to or on behalf of an educational institution
8 while in the employ of a state or local governmental
9 educational service agency or other governmental entity or
10 nonprofit organization; and

11 (5) for the purpose of this subsection, to the
12 extent permitted by federal law, "reasonable assurance" means a
13 reasonable expectation of employment in a similar capacity in
14 the second of such academic years or terms based upon a
15 consideration of all relevant factors, including the historical
16 pattern of reemployment in such capacity, a reasonable
17 anticipation that such employment will be available and a
18 reasonable notice or understanding that the individual will be
19 eligible for and offered employment in a similar capacity.

20 D. Paragraphs (1), (2), (3), (4) and (5) of
21 Subsection C of this section shall apply to services performed
22 for all educational institutions, public or private, for profit
23 or nonprofit, which are operated in this state or subject to an
24 agreement for coverage under the Unemployment Compensation Law
25 of this state, unless otherwise exempt by law.

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1 E. Notwithstanding any other provisions of this
2 section or Section 51-1-7 NMSA 1978, no otherwise eligible
3 individual is to be denied benefits for any week because [~~he~~]
4 the individual is in training or attending school on a full-
5 time basis with the approval of the division nor is [~~such~~] the
6 individual to be denied benefits by reason of application of
7 provisions in Paragraph (3) of Subsection A of this section or
8 [~~Subsection C~~] Paragraph (3) of Subsection A of Section 51-1-7
9 NMSA 1978 with respect to any week in which [~~he~~] the individual
10 is in training or attending school on a full-time basis with
11 the approval of the division. The secretary shall provide, by
12 [~~regulation~~] rule, standards for approved training and the
13 conditions for approving [~~such~~] training for claimants,
14 including any training approved or authorized for approval
15 pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974,
16 as amended, or required to be approved as a condition for
17 certification of the state's Unemployment Compensation Law by
18 the United States secretary of labor.

19 F. Notwithstanding any other provisions of this
20 section, benefits shall not be payable on the basis of services
21 performed by an alien unless such alien is an individual who
22 was lawfully admitted for permanent residence at the time
23 [~~such~~] the services were performed, was lawfully present for
24 the purposes of performing [~~such~~] the services or was
25 permanently residing in the United States under color of law at

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1 the time [such] the services were performed, including an alien
2 who was lawfully present in the United States as a result of
3 the application of the provisions of Section 212(d)(5) of the
4 Immigration and Nationality Act; provided that:

5 (1) any information required of individuals
6 applying for benefits to determine their eligibility for
7 benefits under this subsection shall be uniformly required from
8 all applicants for benefits; and

9 (2) [no] an individual shall not be denied
10 benefits because of [his] the individual's alien status except
11 upon a preponderance of the evidence.

12 G. Notwithstanding any other provision of this
13 section, benefits shall not be paid to any individual on the
14 basis of any services substantially all of which consist of
15 participating in sports or athletic events or training or
16 preparing to so participate for any week that commences during
17 the period between two successive sport seasons, or similar
18 periods, if [such] the individual performed [such] the services
19 in the first of such seasons, or similar periods, and there is
20 a reasonable assurance that [such] the individual will perform
21 [such] the services in the latter of such seasons or similar
22 periods.

23 ~~[H. Students who are enrolled in a full-time course~~
24 ~~schedule in an educational or training institution or program,~~
25 ~~other than those persons in an approved vocational training~~

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1 ~~program in accordance with Subsection E of this section, shall~~
2 ~~not be eligible for unemployment benefits except as provided by~~
3 ~~regulations promulgated by the secretary.~~

4 ~~F.]~~ H. As used in this subsection, "seasonal ski
5 employee" means an employee who has not worked for a ski area
6 operator for more than six consecutive months of the previous
7 twelve months or nine of the previous twelve months. ~~[Any]~~ An
8 employee of a ski area operator who has worked for a ski area
9 operator for six consecutive months of the previous twelve
10 months or nine of the previous twelve months shall not be
11 considered a seasonal ski employee. The following benefit
12 eligibility conditions apply to a seasonal ski employee:

13 (1) except as provided in Paragraphs (2) and
14 (3) of this subsection, a seasonal ski employee employed by a
15 ski area operator on a regular seasonal basis shall be
16 ineligible for a week of unemployment benefits that commences
17 during a period between two successive ski seasons unless
18 ~~[such]~~ the individual establishes to the satisfaction of the
19 secretary that ~~[he]~~ the individual is available for and is
20 making an active search for permanent full-time work;

21 (2) a seasonal ski employee who has been
22 employed by a ski area operator during two successive ski
23 seasons shall be presumed to be unavailable for permanent new
24 work during a period after the second successive ski season
25 that ~~[he]~~ the individual was employed as a seasonal ski

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1 employee; and

2 (3) the presumption described in Paragraph (2)
3 of this subsection shall not arise as to any seasonal ski
4 employee who has been employed by the same ski area operator
5 during two successive ski seasons and has resided continuously
6 for at least twelve successive months and continues to reside
7 in the county in which the ski area facility is located.

8 [~~J.~~] I. Notwithstanding any other provision of this
9 section, an otherwise eligible individual shall not be denied
10 benefits for any week by reason of the application of Paragraph
11 (3) of Subsection A of this section because [~~he~~] the individual
12 is before any court of the United States or any state pursuant
13 to a lawfully issued summons to appear for jury duty. "

14 Section 3. Section 51-1-7 NMSA 1978 (being Laws 1936
15 (S.S.), Chapter 1, Section 5, as amended) is amended to read:

16 "51-1-7. DISQUALIFICATION FOR BENEFITS. --

17 A. An individual shall be disqualified for, and
18 shall not be eligible to receive, benefits:

19 [~~A.~~] (1) if it is determined by the division
20 that [~~he~~] the individual left [~~his~~] employment voluntarily
21 without good cause in connection with [~~his~~] the employment;
22 provided, however, that [~~no~~] a person shall not be denied
23 benefits under this [~~subsection~~] paragraph:

24 (a) solely on the basis of pregnancy or
25 the termination of pregnancy; or

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1 ~~[For purposes of this subsection, "employment" means the~~
2 ~~individual's last employer as defined by the regulations of the~~
3 ~~secretary and the provisions of the Subsection C of Section~~
4 ~~51-1-8 NMSA 1978. The disqualification shall continue for the~~
5 ~~duration of his unemployment and until he has earned wages in~~
6 ~~such bona fide employment other than self-employment as~~
7 ~~provided by regulation of the secretary in an amount equivalent~~
8 ~~to five times his weekly benefit amount otherwise payable;]~~

9 (b) because of domestic abuse evidenced
10 by medical documentation, legal documentation or a sworn
11 statement from the claimant;

12 ~~[B.] (2) if it is determined by the division~~
13 ~~that [he] the individual has been discharged for misconduct~~
14 ~~connected with [his] the individual's employment [For purposes~~
15 ~~of this subsection, "employment" means the individual's last~~
16 ~~employer as defined by the regulations of the secretary and the~~
17 ~~provisions of Subsection C of Section 51-1-8 NMSA 1978. The~~
18 ~~disqualification shall continue for the duration of his~~
19 ~~unemployment and until he has earned wages in such bona fide~~
20 ~~employment other than self-employment as provided by regulation~~
21 ~~of the secretary in an amount equivalent to five times his~~
22 ~~weekly benefit amount otherwise payable]; or~~

23 ~~[C.] (3) if it is determined by the division~~
24 ~~that [he] the individual has failed without good cause either~~
25 ~~to apply for available, suitable work when so directed or~~

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1 referred by the [~~employment security~~] division or to accept
2 suitable work when offered. [~~him~~—~~The disqualification shall~~
3 ~~include the week such failure occurred and shall continue for~~
4 ~~the duration of his unemployment and until he has earned wages~~
5 ~~in bona fide employment other than self-employment as provided~~
6 ~~by regulation of the secretary in an amount equivalent to five~~
7 ~~times his weekly benefit amount otherwise payable; provided~~
8 ~~that no more than one such disqualification shall be imposed~~
9 ~~upon any individual for failure to apply for or accept the same~~
10 ~~position, or a similar position, with the same employer, except~~
11 ~~upon a determination by the division of disqualification under~~
12 ~~Subsection D of this section.~~

13 (1)] B. In determining whether or not any work is
14 suitable for an individual pursuant to Paragraph (3) of
15 Subsection A of this section, the division shall consider the
16 degree of risk involved to [~~his~~] the individual's health,
17 safety and morals, [~~his~~] the individual's physical fitness
18 [~~and~~], prior training, approved training or full-time school
19 attendance, [~~his~~] experience [~~and~~], prior earnings, [~~his~~]
20 length of unemployment and prospects for securing local work in
21 [~~his~~] the individual's customary occupation and the distance of
22 available work from [~~his~~] the individual's residence. [~~(2)~~]
23 Notwithstanding any other provisions of the Unemployment
24 Compensation Law, no work shall be deemed suitable and benefits
25 shall not be denied under the Unemployment Compensation Law to

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1 any otherwise eligible individual for refusing to accept new
2 work under any of the following conditions:

3 [~~(a)~~] (1) if the position offered is vacant
4 due directly to a strike, lockout or other labor dispute;

5 [~~(b)~~] (2) if the wages, hours or other
6 conditions of the work offered are substantially less favorable
7 to the individual than those prevailing for similar work in the
8 locality; or

9 [~~(c)~~] (3) if, as a condition of being
10 employed, the individual would be required to join a company
11 union or to resign from or refrain from joining any bona fide
12 labor organizations.

13 [~~D.~~] C. An individual shall be disqualified for,
14 and shall not be eligible to receive, benefits for any week
15 with respect to which the division finds that [his] the
16 individual's unemployment is due to a labor dispute at the
17 factory, establishment or other premises at which [he] the
18 individual is or was last employed; provided that this
19 subsection shall not apply if it is shown to the satisfaction
20 of the division that:

21 (1) [~~he~~] the individual is not participating
22 in or directly interested in the labor dispute; and

23 (2) [~~he~~] the individual does not belong to a
24 grade or class of workers of which, immediately before the
25 commencement of the labor dispute, there were members employed

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1 at the premises at which the labor dispute occurs, any of whom
2 are participating in or directly interested in the dispute;
3 provided that if in any case separate branches of work [~~which~~
4 that are commonly conducted in separate businesses in separate
5 premises are conducted in separate departments of the same
6 premises, each such department shall, for the purposes of this
7 subsection, be deemed to be a separate factory, establishment
8 or other premises. [~~and~~

9 E.] D. An individual shall be disqualified for, and
10 shall not be eligible to receive, benefits for any week with
11 respect to which, or a part of which, [~~he~~] the individual has
12 received or is seeking, through any agency other than the
13 division, unemployment benefits under an unemployment
14 compensation law of another state or of the United States;
15 provided that if the appropriate agency of such other state or
16 of the United States finally determines that [~~he~~] the
17 individual is not entitled to such unemployment benefits, this
18 disqualification shall not apply.

19 E. A disqualification pursuant to Paragraph (1) or
20 (2) of Subsection A of this section shall continue for the
21 duration of the individual's unemployment and until the
22 individual has earned wages in bona fide employment other than
23 self-employment, as provided by rule of the secretary, in an
24 amount equivalent to five times the individual's weekly benefit
25 otherwise payable. A disqualification pursuant to Paragraph

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1 (3) of Subsection A of this section shall include the week the
2 failure occurred and shall continue for the duration of the
3 individual's unemployment and until the individual has earned
4 wages in bona fide employment other than self-employment, as
5 provided by rule of the secretary, in an amount equivalent to
6 five times the individual's weekly benefit amount otherwise
7 payable; provided that no more than one such disqualification
8 shall be imposed upon an individual for failure to apply for or
9 accept the same position, or a similar position, with the same
10 employer, except upon a determination by the division of
11 disqualification pursuant to Subsection C of this section.

12 F. As used in this section:

13 (1) "domestic abuse" means that term as
14 defined in Section 40-13-2 NMSA 1978; and

15 (2) "employment" means employment by the
16 individual's last employer as defined by rules of the
17 secretary."

18 Section 4. Section 51-1-11 NMSA 1978 (being Laws 1961,
19 Chapter 139, Section 3, as amended by Laws 2000, Chapter 3,
20 Section 3 and by Laws 2000, Chapter 7, Section 3) is amended to
21 read:

22 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE. --

23 A. The division shall maintain a separate account
24 for each contributing employer and shall credit ~~his~~ the
25 contributing employer's account with all contributions paid by

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1 ~~[hi-m]~~ that employer under the Unemployment Compensation Law.
2 Nothing in the Unemployment Compensation Law shall be construed
3 to grant ~~[any]~~ an employer or individuals in ~~[hi-s]~~ the
4 employer's service prior claims or rights to the amounts paid
5 by the employer into the fund.

6 B. Benefits paid to an individual shall be charged
7 against the accounts of ~~[hi-s]~~ the individual's base-period
8 employers on a pro rata basis according to the proportion of
9 ~~[hi-s]~~ the individual's total base-period wages received from
10 each employer, except that no benefits paid to a claimant as
11 extended benefits under the provisions of Section 51-1-48 NMSA
12 1978 shall be charged to the account of any base-period
13 employer who is not on a reimbursable basis and who is not a
14 governmental entity and, except as the secretary shall by
15 ~~[regulation]~~ rule prescribe otherwise, in the case of benefits
16 paid to an individual who:

17 (1) left the employ of a base-period employer
18 who is not on a reimbursable basis voluntarily without good
19 cause in connection with ~~[hi-s]~~ the individual's employment;

20 (2) was discharged from the employment of a
21 base-period employer who is not on a reimbursable basis for
22 misconduct connected with ~~[his-work]~~ the individual's
23 employment;

24 (3) is employed part time by a base-period
25 employer who is not on a reimbursable basis and who continues

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1 to furnish the individual the same part-time work while the
2 individual is separated from full-time work for a
3 nondisqualifying reason; or

4 (4) received benefits based upon wages earned
5 from a base-period employer who is not on a reimbursable basis
6 while attending approved training under the provisions of
7 Subsection E of Section 51-1-5 NMSA 1978.

8 C. The division shall not charge a contributing or
9 reimbursing base-period employer's account with any portion of
10 benefit amounts that the division can bill to or recover from
11 the federal government as either regular or extended benefits.

12 D. The division shall not charge a contributing
13 base-period employer's account with any portion of benefits
14 paid to an individual for dependent care allowance or because
15 the individual to whom benefits are paid:

16 (1) separated from employment due to domestic
17 abuse; or

18 (2) is enrolled in approved training or is
19 attending school on a full-time basis.

20 [~~D.~~] E. All contributions to the fund shall be
21 pooled and available to pay benefits to any individual entitled
22 thereto, irrespective of the source of such contributions. The
23 standard rate of contributions payable by each employer shall
24 be five and four-tenths percent.

25 [~~E.—No~~] F. An employer's rate shall not be varied

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1 from the standard rate for any calendar year unless, as of the
2 computation date for that year, [~~his~~] the employer's account
3 has been chargeable with benefits throughout the preceding
4 thirty-six months, except that:

5 (1) the provisions of this subsection shall
6 not apply to governmental entities;

7 (2) [~~subsequent to December 31, 1984~~]
8 effective January 1, 2004, any employing unit that becomes an
9 employer subject to the payment of contributions under the
10 Unemployment Compensation Law or has been an employer subject
11 to the payment of contributions at a standard rate of two [~~and~~
12 ~~seven-tenths~~] percent through December 31, [~~1984~~] 2003 shall be
13 subject to the payment of contributions at the reduced rate of
14 two [~~and seven-tenths~~] percent until, as of the computation
15 date of a particular year, the employer's account has been
16 chargeable with benefits throughout the preceding thirty-six
17 months; [~~and~~]

18 (3) any individual, type of organization or
19 employing unit that acquires all or part of the trade or
20 business of another employing unit, pursuant to Paragraphs (2)
21 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
22 a reduced rate of contribution shall be entitled to the
23 transfer of the reduced rate to the extent permitted under
24 Subsection [~~G~~] H of this section; and

25 (4) an employer that, at the time of

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1 establishing an account, is in business in another state or
2 states and that is not currently doing business in New Mexico
3 may elect, pursuant to Paragraph (5) of this subsection, to
4 receive a beginning contribution rate of two percent or a
5 contribution rate based on the current contribution rate
6 schedule in Paragraph (4) of Subsection I of this section,
7 whichever is lower, if:

8 (a) the employer has been in operation
9 in the other state or states for at least three years
10 immediately preceding the date of becoming a liable employer in
11 New Mexico, throughout which an individual in the employer's
12 employ could have received benefits if eligible; and

13 (b) the employer provides the
14 authenticated account history as defined by rule of the
15 secretary from information accumulated from operations in the
16 other state or all the other states to compute a current New
17 Mexico rate;

18 (5) the election authorized in Paragraph (4)
19 of this subsection shall be made in writing within thirty days
20 after receiving notice of New Mexico liability and, if not made
21 timely, a two percent rate will be assigned; if the election is
22 made timely, the employer's account will receive the lesser of
23 the computed rate determined by the condition of the account
24 for the computation date immediately preceding the New Mexico
25 liable date, or the reduced rate of two percent; rates for

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1 subsequent years will be determined by the condition of the
2 account for the computation date.

3 ~~[F-]~~ G. The secretary shall, for the year 1942 and
4 for each calendar year thereafter, classify employers in
5 accordance with their actual experience in the payment of
6 contributions and with respect to benefits charged against
7 their accounts, with a view of fixing such contribution rates
8 as will reflect such benefit experience. ~~[Each]~~ An employer's
9 rate for any calendar year shall be determined on the basis of
10 ~~[his]~~ the employer's record and the condition of the fund as of
11 the computation date for such calendar year.

12 An employer may make voluntary payments in addition to the
13 contributions required under the Unemployment Compensation Law,
14 which shall be credited to ~~[his]~~ the employer's account in
15 accordance with department ~~[regulation]~~ rule. The voluntary
16 payments shall be included in the employer's account as of the
17 employer's most recent computation date if they are made on or
18 before the following March 1. Voluntary payments when accepted
19 from an employer shall not be refunded in whole or in part.

20 ~~[G-]~~ H. In the case of a transfer of an employing
21 enterprise, the experience history of the transferred
22 enterprise as provided in Subsection ~~[F]~~ G of this section
23 shall be transferred from the predecessor employer to the
24 successor under the following conditions and in accordance with
25 the applicable ~~[regulations]~~ rules of the secretary:

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(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

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1 (b) notice of the transfer has been
2 given in accordance with the [~~regulations~~] rules of the
3 secretary within four years of the transaction transferring the
4 employing enterprise or the date of the actual transfer of
5 control and operation of the employing enterprise;

6 (c) in the case of the transfer of an
7 employing enterprise, the successor employer must notify the
8 division of the acquisition on or before the due date of the
9 successor employer's first wage and contribution report. If
10 the successor employer fails to notify the division of the
11 acquisition within this time limit, the division, when it
12 receives actual notice, shall effect the transfer of the
13 experience history and applicable rate of contribution
14 retroactively to the date of the acquisition, and the successor
15 shall pay a penalty of fifty dollars (\$50.00); and

16 (d) where the transaction involves only
17 a merger, consolidation or other form of reorganization without
18 a substantial change in the ownership and controlling interest
19 of the business entity, as determined by the secretary, the
20 limitations on transfers stated in Subparagraphs (a), (b) and
21 (c) of this paragraph shall not apply. [~~No~~] A party to a
22 merger, consolidation or other form of reorganization described
23 in this paragraph shall not be relieved of liability for any
24 contributions, interest or penalties due and owing from the
25 employing enterprise at the time of the merger, consolidation

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1 or other form of reorganization.

2 (3) The applicable experience history may be
3 transferred to the successor in the case of a partial transfer
4 of an employing enterprise if the successor has acquired one or
5 more of the several employing enterprises of a predecessor but
6 not all of the employing enterprises of the predecessor and
7 each employing enterprise so acquired was operated by the
8 predecessor as a separate store, factory, shop or other
9 separate employing enterprise and the predecessor, throughout
10 the entire period of [~~his~~] the contribution with liability
11 applicable to each enterprise transferred, has maintained and
12 preserved payroll records that, together with records of
13 contribution liability and benefit chargeability, can be
14 separated by the parties from the enterprises retained by the
15 predecessor to the satisfaction of the secretary or [~~his~~] the
16 secretary's delegate. A partial experience history transfer
17 will be made only if:

18 (a) the successor notifies the division
19 of the acquisition, in writing, not later than the due date of
20 the successor's first quarterly wage and contribution report
21 after the effective date of the acquisition;

22 (b) the successor files an application
23 provided by the division that contains the endorsement of the
24 predecessor within thirty days from the delivery or mailing of
25 such application by the division to the successor's last known

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1 address; and

2 (c) the successor files with the
3 application a Form ES-903A or its equivalent with a schedule of
4 the name and social security number of and the wages paid to
5 and the contributions paid for each employee for the three and
6 one-half year period preceding the computation date as defined
7 in Subparagraph (d) of Paragraph (3) of Subsection [H] I of
8 this section through the date of transfer or such lesser period
9 as the enterprises transferred may have been in operation. The
10 application and Form ES-903A shall be supported by the
11 predecessor's permanent employment records, which shall be
12 available for audit by the division. The application and Form
13 ES-903A shall be reviewed by the division and, upon approval,
14 the percentage of the predecessor's experience history
15 attributable to the enterprises transferred shall be
16 transferred to the successor. The percentage shall be obtained
17 by dividing the taxable payrolls of the transferred enterprises
18 for such three and one-half year period preceding the date of
19 computation or such lesser period as the enterprises
20 transferred may have been in operation by the predecessor's
21 entire payroll.

22 [H.] I. For each calendar year, adjustments of
23 contribution rates below the standard or reduced rate and
24 measures designed to protect the fund are provided [as follows]
25 in Paragraphs (1) through (4) of this subsection.

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1 (1) The total assets in the fund and the total
2 of the last annual payrolls of all employers subject to
3 contributions as of the computation date for each year shall be
4 determined. These annual totals are here called "the fund" and
5 "total payrolls". For each year, the "reserve" of each
6 employer qualified under Subsection E of this section shall be
7 fixed by the excess of ~~[his]~~ the employer's total contributions
8 over total benefit charges computed as a percentage of ~~[his]~~
9 the employer's average payroll reported for contributions. The
10 determination of each employer's annual rate, computed as of
11 the computation date for each calendar year, shall be made by
12 matching ~~[his]~~ the employer's reserve as shown in the reserve
13 column with the corresponding rate ~~[shown in]~~ in the rate
14 column of the applicable rate schedule of the table provided in
15 Paragraph (4) of this subsection.

16 (2) Each employer's rate for each calendar
17 year commencing January 1, 1979 or thereafter shall be:

18 (a) the corresponding rate in schedule 0
19 of the table provided in Paragraph (4) of this subsection if
20 the fund equals at least three and seven-tenths percent of the
21 total payrolls;

22 ~~[(a)]~~ (b) the corresponding rate in
23 schedule 1 of the table provided in Paragraph (4) of this
24 subsection ~~[on the corresponding line as his reserve]~~ if the
25 fund ~~[equals at least]~~ has dropped to less than three and

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1 seven-tenths percent and not less than three and four-tenths
2 percent of the total payrolls;

3 ~~[(b)]~~ (c) the corresponding rate in
4 schedule 2 of the table provided in Paragraph (4) of this
5 subsection ~~[on the corresponding line]~~ if the fund has dropped
6 to less than three and four-tenths percent and not less than
7 two and seven-tenths percent of the total payrolls;

8 ~~[(c)]~~ (d) the corresponding rate in
9 schedule 3 of the table provided in Paragraph (4) of this
10 subsection ~~[on the corresponding line]~~ if the fund has dropped
11 to less than two and seven-tenths percent and not less than two
12 percent of the total payrolls;

13 ~~[(d)]~~ (e) the corresponding rate in
14 schedule 4 of the table provided in Paragraph (4) of this
15 subsection ~~[on the corresponding line]~~ if the fund has dropped
16 to less than two percent and not less than one and one-half
17 percent of the total payrolls;

18 ~~[(e)]~~ (f) the corresponding rate in
19 schedule 5 of the table provided in Paragraph (4) of this
20 subsection ~~[on the corresponding line]~~ if the fund has dropped
21 to less than one and one-half percent and not less than one
22 percent of the total payrolls; or

23 ~~[(f)]~~ (g) the corresponding rate in
24 schedule 6 of the table provided in Paragraph (4) of this
25 subsection ~~[on the corresponding line]~~ if the fund has dropped

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1 less than one percent of the total payrolls.

2 (3) As used in this section:

3 (a) "annual payroll" means the total
4 amount of remuneration from an employer for employment during a
5 twelve-month period ending on a computation date, and "average
6 payroll" means the average of the last three annual payrolls;

7 (b) "base-period wages" means the wages
8 of an individual for insured work during [~~his~~] the individual's
9 base period on the basis of which [~~his~~] the individual's
10 benefit rights were determined;

11 (c) "base-period employers" means the
12 employers of an individual during [~~his~~] the individual's base
13 period; and

14 (d) "computation date" for each calendar
15 year means the close of business on June 30 of the preceding
16 calendar year.

17 (4) Table of employer reserves and
18 contribution rate schedules:

19 Employer	<u>Contribution</u>	Contribution	Contribution	Contribution
20 Reserve	<u>Schedule 0</u>	Schedule 1	Schedule 2	Schedule 3
21 10.0% and over	<u>0.03%</u>	0.05%	0.1%	0.6%
22 9.0%- 9.9%	<u>0.06%</u>	0.1%	0.2%	0.9%
23 8.0%- 8.9%	<u>0.10%</u>	0.2%	0.4%	1.2%
24 7.0%- 7.9%	<u>0.30%</u>	0.4%	0.6%	1.5%
25 6.0%- 6.9%	<u>0.50%</u>	0.6%	0.8%	1.8%

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1	5.0%- 5.9%	<u>0.70%</u>	0.8%	1.1%	2.1%
2	4.0%- 4.9%	<u>1.00%</u>	1.1%	1.4%	2.4%
3	3.0%- 3.9%	<u>1.30%</u>	1.4%	1.7%	2.7%
4	2.0%- 2.9%	<u>1.60%</u>	1.7%	2.0%	3.0%
5	1.0%- 1.9%	<u>1.90%</u>	2.0%	2.4%	3.3%
6	0.9%- 0.0%	<u>2.40%</u>	2.4%	3.3%	3.6%
7	(- 0.1%) - (- 0.5%)	<u>3.30%</u>	3.3%	3.6%	3.9%
8	(- 0.5%) - (- 1.0%)	<u>4.20%</u>	4.2%	4.2%	4.2%
9	(- 1.0%) - (- 2.0%)	<u>5.00%</u>	5.0%	5.0%	5.0%
10	Under (- 2.0%)	<u>5.40%</u>	5.4%	5.4%	5.4%
11	Employer	Contri buti on	Contri buti on	Contri buti on	
12	Reserve	Schedul e 4	Schedul e 5	Schedul e 6	
13	10.0% and over	0.9%	1.2%	2.7%	
14	9.0%- 9.9%	1.2%	1.5%	2.7%	
15	8.0%- 8.9%	1.5%	1.8%	2.7%	
16	7.0%- 7.9%	1.8%	2.1%	2.7%	
17	6.0%- 6.9%	2.1%	2.4%	2.7%	
18	5.0%- 5.9%	2.4%	2.7%	3.0%	
19	4.0%- 4.9%	2.7%	3.0%	3.3%	
20	3.0%- 3.9%	3.0%	3.3%	3.6%	
21	2.0%- 2.9%	3.3%	3.6%	3.9%	
22	1.0%- 1.9%	3.6%	3.9%	4.2%	
23	0.9%- 0.0%	3.9%	4.2%	4.5%	
24	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%	
25	(- 0.5%) - (- 1.0%)	4.5%	4.8%	5.1%	

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1 (- 1. 0%) - (- 2. 0%) 5. 0% 5. 1% 5. 3%
2 Under (- 2. 0%) 5. 4% 5. 4% 5. 4%.

3 [~~H-~~] J. The division shall promptly notify each
4 employer of [~~his~~] the employer's rate of contributions as
5 determined for any calendar year pursuant to this section.
6 Such notification shall include the amount determined as the
7 employer's average payroll, the total of all [~~his~~] of the
8 employer's contributions paid on [~~his own~~] the employer's
9 behalf and credited to [~~his~~] the employer's account for all
10 past years and total benefits charged to [~~his~~] the employer's
11 account for all such years. Such determination shall become
12 conclusive and binding upon the employer unless, within thirty
13 days after the mailing of notice thereof to [~~his~~] the
14 employer's last known address or in the absence of mailing,
15 within thirty days after the delivery of such notice, the
16 employer files an application for review and redetermination,
17 setting forth [~~his~~] the employer's reason therefor. The
18 employer shall be granted an opportunity for a fair hearing in
19 accordance with [~~regulations~~] rules prescribed by the
20 secretary, but [~~no~~] an employer shall not have standing, in any
21 proceeding involving [~~his~~] the employer's rate of contributions
22 or contribution liability, to contest the chargeability to
23 [~~his~~] the employer's account of any benefits paid in accordance
24 with a determination, redetermination or decision pursuant to
25 Section 51-1-8 NMSA 1978, except upon the ground that the

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1 services on the basis of which such benefits were found to be
2 chargeable did not constitute services performed in employment
3 for ~~[him]~~ the employer and only in the event that ~~[he]~~ the
4 employer was not a party to such determination, redetermination
5 or decision, or to any other proceedings under the Unemployment
6 Compensation Law in which the character of such services was
7 determined. The employer shall be promptly notified of the
8 decision on ~~[his]~~ the employer's application for
9 redetermination, which shall become final unless, within
10 fifteen days after the mailing of notice thereof to ~~[his]~~ the
11 employer's last known address or in the absence of mailing,
12 within fifteen days after the delivery of such notice, further
13 appeal is initiated pursuant to Subsection D of Section 51-1-8
14 NMSA 1978.

15 ~~[J.]~~ K. The division shall provide each
16 contributing employer, within ninety days of the end of each
17 calendar quarter, a written determination of benefits
18 chargeable to ~~[his]~~ the employer's account. Such determination
19 shall become conclusive and binding upon the employer for all
20 purposes unless, within thirty days after the mailing of the
21 determination to ~~[his]~~ the employer's last known address or in
22 the absence of mailing, within thirty days after the delivery
23 of such determination, the employer files an application for
24 review and redetermination, setting forth ~~[his]~~ the employer's
25 reason therefor. The employer shall be granted an opportunity

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1 for a fair hearing in accordance with [~~regulations~~] rules
2 prescribed by the secretary, but [~~no~~] an employer shall not
3 have standing in any proceeding involving [~~his~~] the employer's
4 contribution liability to contest the chargeability to [~~his~~]
5 the employer's account of any benefits paid in accordance with
6 a determination, redetermination or decision pursuant to
7 Section 51-1-8 NMSA 1978, except upon the ground that the
8 services on the basis of which such benefits were found to be
9 chargeable did not constitute services performed in employment
10 for [~~him~~] the employer and only in the event that [~~he~~] the
11 employer was not a party to such determination, redetermination
12 or decision, or to any other proceedings under the Unemployment
13 Compensation Law in which the character of such services was
14 determined. The employer shall be promptly notified of the
15 decision on [~~his~~] the employer's application for
16 redetermination, which shall become final unless, within
17 fifteen days after the mailing of notice thereof to [~~his~~] the
18 employer's last known address or in the absence of mailing,
19 within fifteen days after the delivery of such notice, further
20 appeal is initiated pursuant to Subsection D of Section 51-1-8
21 NMSA 1978.

22 [~~K.~~] L. The contributions, together with interest
23 and penalties thereon imposed by the Unemployment Compensation
24 Law, shall not be assessed nor shall action to collect the same
25 be commenced more than four years after a report showing the

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1 amount of the contributions was due. In the case of a false or
2 fraudulent contribution report with intent to evade
3 contributions or a willful failure to file a report of all
4 contributions due, the contributions, together with interest
5 and penalties thereon, may be assessed or an action to collect
6 such contributions may be begun at any time. Before the
7 expiration of such period of limitation, the employer and the
8 secretary may agree in writing to an extension thereof and the
9 period so agreed on may be extended by subsequent agreements in
10 writing. In any case where the assessment has been made and
11 action to collect has been commenced within four years of the
12 due date of any contribution, interest or penalty, including
13 the filing of a warrant of lien by the secretary pursuant to
14 Section 51-1-36 NMSA 1978, such action shall not be subject to
15 any period of limitation.

16 ~~[E-]~~ M. The secretary shall correct any error in
17 the determination of an employer's rate of contribution during
18 the calendar year to which the erroneous rate applies,
19 notwithstanding that notification of the employer's rate of
20 contribution may have been issued and contributions paid
21 pursuant to the notification. Upon issuance by the division of
22 a corrected rate of contribution, the employer shall have the
23 same rights to review and redetermination as provided in
24 Subsection I of this section.

25 ~~[M-]~~ N. Any interest required to be paid on

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1 advances to this state's unemployment compensation fund under
2 Title 12 of the Social Security Act shall be paid in a timely
3 manner as required under Section 1202 of Title 12 of the Social
4 Security Act and shall not be paid, directly or indirectly, by
5 the state from amounts in the state's unemployment compensation
6 fund.

7 ~~[N. Notwithstanding the provisions of this section,~~
8 ~~the rate in schedule 1 of the table provided in Paragraph (4)~~
9 ~~of Subsection H of this section shall be applied for four~~
10 ~~calendar years beginning January 1, 1999.]"~~

11 Section 5. Section 51-1-42 NMSA 1978 (being Laws 1936
12 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

13 "51-1-42. DEFINITIONS.--As used in the Unemployment
14 Compensation Law:

15 A. "base period" means the first four of the last
16 five completed calendar quarters immediately preceding the
17 first day of an individual's benefit year, except that "base
18 period" means for benefit years effective on or after
19 January 1, 2004 for an individual who does not have sufficient
20 wages in the base period as defined to qualify for benefits
21 pursuant to Section 51-1-5 NMSA 1978, the individual's base
22 period shall be the last four completed calendar quarters
23 immediately preceding the first day of the individual's benefit
24 year if that period qualifies the individual for benefits
25 pursuant to Section 51-1-5 NMSA 1978; provided that:

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1 (1) wages that fall within the base period of
2 claims established pursuant to this subsection are not
3 available for reuse in qualifying for a subsequent benefit
4 year; and

5 (2) in the case of a combined-wage claim
6 pursuant to the arrangement approved by the federal secretary
7 of labor, the base period is that base period applicable under
8 the unemployment compensation law of the paying state;

9 B. "benefits" means the cash unemployment
10 compensation payments payable to an eligible individual
11 pursuant to Section 51-1-4 NMSA 1978 with respect to [~~his~~] the
12 individual's weeks of unemployment;

13 C. "contributions" means the money payments
14 required by Section 51-1-9 NMSA 1978 to be made into the fund
15 by an employer on account of having individuals performing
16 services for [~~him~~] the employer;

17 D. "employing unit" means any individual or type of
18 organization, including any partnership, association,
19 cooperative, trust, estate, joint-stock company, agricultural
20 enterprise, insurance company or corporation, whether domestic
21 or foreign, or the receiver, trustee in bankruptcy, trustee or
22 successor thereof, household, fraternity or club, the legal
23 representative of a deceased person or any state or local
24 government entity to the extent required by law to be covered
25 as an employer, which has in its employ one or more individuals

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1 performing services for it within this state. [~~All~~
2 ~~individuals~~] An individual performing services for [~~any~~] an
3 employing unit that maintains two or more separate
4 establishments within this state shall be deemed to be employed
5 by a single employing unit for all the purposes of the
6 Unemployment Compensation Law. [~~Individuals~~] An individual
7 performing services for [~~contractors, subcontractors or agents~~
8 ~~that are~~] a contractor, subcontractor or agent that is
9 performing work or services for an employing unit, as described
10 in this subsection, which is within the scope of the employing
11 unit's usual trade, occupation, profession or business, shall
12 be deemed to be in the employ of the employing unit for all
13 purposes of the Unemployment Compensation Law unless [~~such~~] the
14 contractor, subcontractor or agent is itself an employer within
15 the provisions of Subsection E of this section;

16 E. "employer" includes:

17 (1) [~~any~~] an employing unit [~~which~~] that:

18 (a) unless otherwise provided in this
19 section, paid for service in employment as defined in
20 Subsection F of this section wages of four hundred fifty
21 dollars (\$450) or more in any calendar quarter in either the
22 current or preceding calendar year or had in employment, as
23 defined in Subsection F of this section, for some portion of a
24 day in each of twenty different calendar weeks during either
25 the current or the preceding calendar year, and irrespective of

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1 whether the same individual was in employment in each such day,
2 at least one individual;

3 (b) for the purposes of Subparagraph (a)
4 of this paragraph, if any week includes both December 31 and
5 January 1, the days of that week up to January 1 shall be
6 deemed one calendar week and the days beginning January 1,
7 another such week; and

8 (c) for purposes of defining an
9 "employer" under Subparagraph (a) of this paragraph, the wages
10 or remuneration paid to individuals performing services in
11 employment in agricultural labor or domestic services as
12 provided in Paragraphs (6) and (7) of Subsection F of this
13 section shall not be taken into account; except that any
14 employing unit determined to be an employer of agricultural
15 labor under Paragraph (6) of Subsection F of this section shall
16 be an employer under Subparagraph (a) of this paragraph so long
17 as the employing unit is paying wages or remuneration for
18 services other than agricultural services;

19 (2) any individual or type of organization
20 that acquired the trade or business or substantially all of the
21 assets thereof, of an employing unit that at the time of the
22 acquisition was an employer subject to the Unemployment
23 Compensation Law; provided that where such an acquisition takes
24 place, the secretary may postpone activating the separate
25 account pursuant to Subsection A of Section 51-1-11 NMSA 1978

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1 until such time as the successor employer has employment as
2 defined in Subsection F of this section;

3 (3) [~~any~~] an employing unit that acquired all
4 or part of the organization, trade, business or assets of
5 another employing unit and that, if treated as a single unit
6 with [~~such~~] the other employing unit or part thereof, would be
7 an employer under Paragraph (1) of this subsection;

8 (4) [~~any~~] an employing unit not an employer by
9 reason of any other paragraph of this subsection:

10 (a) for which, within either the current
11 or preceding calendar year, service is or was performed with
12 respect to which such employing unit is liable for any federal
13 tax against which credit may be taken for contributions
14 required to be paid into a state unemployment fund; or

15 (b) [~~which~~] that, as a condition for
16 approval of the Unemployment Compensation Law for full tax
17 credit against the tax imposed by the Federal Unemployment Tax
18 Act, is required, pursuant to [~~such~~] that act, to be an
19 "employer" under the Unemployment Compensation Law;

20 (5) [~~any~~] an employing unit that, having
21 become an employer under Paragraph (1), (2), (3) or (4) of this
22 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to
23 be an employer subject to the Unemployment Compensation Law;

24 (6) for the effective period of its election
25 pursuant to Section 51-1-18 NMSA 1978, any other employing unit

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1 that has elected to become fully subject to the Unemployment
2 Compensation Law;

3 (7) ~~any~~ an employing unit for which any
4 services performed in its employ are deemed to be performed in
5 this state pursuant to an election under an arrangement entered
6 into in accordance with Subsection A of Section 51-1-50 NMSA
7 1978; and

8 (8) an Indian tribe as defined in 26 USCA
9 Section 3306(u) for which service in employment is performed;

10 F. "employment":

11 (1) means any service, including service in
12 interstate commerce, performed for wages or under any contract
13 of hire, written or oral, express or implied;

14 (2) means an individual's entire service,
15 performed within or both within and without this state if:

16 (a) the service is primarily localized
17 in this state with services performed outside the state being
18 only incidental thereto; or

19 (b) the service is not localized in any
20 state but some of the service is performed in this state and:

21 1) the base of operations or, if there is no base of
22 operations, the place from which such service is directed or
23 controlled, is in this state; or 2) the base of operations or
24 place from which such service is directed or controlled is not
25 in any state in which some part of the service is performed but

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1 the individual's residence is in this state;

2 (3) means services performed within this state
3 but not covered under Paragraph (2) of this subsection if
4 contributions or payments in lieu of contributions are not
5 required and paid with respect to such services under an
6 unemployment compensation law of any other state, the federal
7 government or Canada;

8 (4) means services covered by an election
9 pursuant to Section 51-1-18 NMSA 1978 and services covered by
10 an election duly approved by the secretary in accordance with
11 an arrangement pursuant to Paragraph (1) of Subsection A of
12 Section 51-1-50 NMSA 1978 shall be deemed to be employment
13 during the effective period of [~~such~~] the election;

14 (5) means services performed by an individual
15 for an employer for wages or other remuneration unless and
16 until it is established by a preponderance of evidence that:

17 (a) [~~such~~] the individual has been and
18 will continue to be free from control or direction over the
19 performance of [~~such~~] the services both under [~~his~~] the
20 individual's contract of service and in fact;

21 (b) [~~such~~] the service is either outside
22 the usual course of business for which [~~such~~] the service is
23 performed or that such service is performed outside of all the
24 places of business of the enterprise for which such service is
25 performed; and

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1 (c) [~~such~~] the individual is customarily
2 engaged in an independently established trade, occupation,
3 profession or business of the same nature as that involved in
4 the contract of service;

5 (6) means service performed after December 31,
6 1977 by an individual in agricultural labor as defined in
7 Subsection Q of this section if:

8 (a) [~~such~~] the service is performed for
9 an employing unit that: 1) paid remuneration in cash of twenty
10 thousand dollars (\$20,000) or more to individuals in [~~such~~]
11 that employment during any calendar quarter in either the
12 current or the preceding calendar year; or 2) employed in
13 agricultural labor ten or more individuals for some portion of
14 a day in each of twenty different calendar weeks in either the
15 current or preceding calendar year, whether or not [~~such~~] the
16 weeks were consecutive, and regardless of whether [~~such~~] the
17 individuals were employed at the same time;

18 (b) [~~such~~] the service is not performed
19 before January 1, 1980 by an individual who is an alien
20 admitted to the United States to perform service in
21 agricultural labor pursuant to Sections 214(c) and 101(15)(H)
22 of the federal Immigration and Nationality Act; and

23 (c) for purposes of this paragraph,
24 [~~any~~] an individual who is a member of a crew furnished by a
25 crew leader to perform service in agricultural labor for a farm

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1 operator or other person shall be treated as an employee of
2 [~~such~~] the crew leader: 1) if [~~such~~] the crew leader meets the
3 requirements of a crew leader as defined in Subsection L of
4 this section; or 2) substantially all the members of [~~such~~] the
5 crew operate or maintain mechanized agricultural equipment that
6 is provided by the crew leader; and 3) the individuals
7 performing [~~such~~] the services are not, by written agreement or
8 in fact, within the meaning of Paragraph (5) of this
9 subsection, performing services in employment for the farm
10 operator or other person;

11 (7) means service performed after December 31,
12 1977 by an individual in domestic service in a private home,
13 local college club or local chapter of a college fraternity or
14 sorority for a person or organization that paid cash
15 remuneration of one thousand dollars (\$1,000) in any calendar
16 quarter in the current or preceding calendar year to
17 individuals performing such services;

18 (8) means service performed after December 31,
19 1971 by an individual in the employ of a religious, charitable,
20 educational or other organization but only if the following
21 conditions are met:

22 (a) the service is excluded from
23 "employment" as defined in the Federal Unemployment Tax Act
24 solely by reason of Section 3306(c)(8) of that act; and

25 (b) the organization meets the

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1 requirements of "employer" as provided in Subparagraph (a) of
2 Paragraph (1) of Subsection E of this section;

3 (9) means service of an individual who is a
4 citizen of the United States, performed outside the United
5 States, except in Canada, after December 31, 1971 in the employ
6 of an American employer, other than service that is deemed
7 "employment" under the provisions of Paragraph (2) of this
8 subsection or the parallel provisions of another state's law,
9 if:

10 (a) the employer's principal place of
11 business in the United States is located in this state;

12 (b) the employer has no place of
13 business in the United States, but: 1) the employer is an
14 individual who is a resident of this state; 2) the employer is
15 a corporation organized under the laws of this state; or 3) the
16 employer is a partnership or a trust and the number of the
17 partners or trustees who are residents of this state is greater
18 than the number who are residents of any one other state; or

19 (c) none of the criteria of
20 Subparagraphs (a) and (b) of this paragraph are met, but the
21 employer has elected coverage in this state or, the employer
22 having failed to elect coverage in any state, the individual
23 has filed a claim for benefits, based on such service, under
24 the law of this state.

25 "American employer" for the purposes of this paragraph

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1 means a person who is: 1) an individual who is a resident of
2 the United States; 2) a partnership if two-thirds or more of
3 the partners are residents of the United States; 3) a trust if
4 all of the trustees are residents of the United States; or 4) a
5 corporation organized under the laws of the United States or of
6 any state. For the purposes of this paragraph, "United States"
7 includes the United States, the District of Columbia, the
8 commonwealth of Puerto Rico and the Virgin Islands;

9 (10) means, notwithstanding any other
10 provisions of this subsection, service with respect to which a
11 tax is required to be paid under any federal law imposing a tax
12 against which credit may be taken for contributions required to
13 be paid into a state unemployment fund or which as a condition
14 for full tax credit against the tax imposed by the Federal
15 Unemployment Tax Act is required to be covered under the
16 Unemployment Compensation Law; [~~and~~]

17 (11) means service performed in the employ of
18 an Indian tribe if:

19 (a) the service is excluded from
20 "employment" as defined in 26 USCA Section 3306(c) solely by
21 reason of 26 USCA Section 3306(c)(7); and

22 (b) the service is not otherwise
23 excluded from employment pursuant to the Unemployment
24 Compensation Law;

25 (12) does not include:

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1 (a) service performed in the employ of:
2 1) a church or convention or association of churches; or 2) an
3 organization that is operated primarily for religious purposes
4 and that is operated, supervised, controlled or principally
5 supported by a church or convention or association of churches;

6 (b) service performed by a duly
7 ordained, commissioned or licensed minister of a church in the
8 exercise of his ministry or by a member of a religious order in
9 the exercise of duties required by such order;

10 (c) service performed by an individual
11 in the employ of his son, daughter or spouse, and service
12 performed by a child under the age of majority in the employ of
13 his father or mother;

14 (d) service performed in the employ of
15 the United States government or an instrumentality of the
16 United States immune under the constitution of the United
17 States from the contributions imposed by the Unemployment
18 Compensation Law except that to the extent that the congress of
19 the United States shall permit states to require any
20 instrumentalities of the United States to make payments into an
21 unemployment fund under a state unemployment compensation act,
22 all of the provisions of the Unemployment Compensation Law
23 shall be applicable to such instrumentalities, and to service
24 performed for such instrumentalities in the same manner, to the
25 same extent and on the same terms as to all other employers,

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1 employing units, individuals and services; provided that if
2 this state shall not be certified for any year by the secretary
3 of labor of the United States under Section 3304 of the federal
4 Internal Revenue Code of 1986, 26 U. S. C. Section 3304, the
5 payments required of such instrumentalities with respect to
6 such year shall be refunded by the department from the fund in
7 the same manner and within the same period as is provided in
8 Subsection D of Section 51-1-36 NMSA 1978 with respect to
9 contributions erroneously collected;

10 (e) service performed in a facility
11 conducted for the purpose of carrying out a program of
12 rehabilitation for individuals whose earning capacity is
13 impaired by age or physical or mental deficiency or injury or
14 providing remunerative work for individuals who because of
15 their impaired physical or mental capacity cannot be readily
16 absorbed in the competitive labor market, by an individual
17 receiving ~~[such]~~ that rehabilitation or remunerative work;

18 (f) service with respect to which
19 unemployment compensation is payable under an unemployment
20 compensation system established by an act of congress;

21 (g) service performed in the employ of a
22 foreign government, including service as a consular or other
23 officer or employee or a nondiplomatic representative;

24 (h) service performed by an individual
25 for a person as an insurance agent or as an insurance

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1 solicitor, if all such service performed by [~~sueh~~] the
2 individual for [~~sueh~~] the person is performed for remuneration
3 solely by way of commission;

4 (i) service performed by an individual
5 under the age of eighteen in the delivery or distribution of
6 newspapers or shopping news, not including delivery or
7 distribution to any point for subsequent delivery or
8 distribution;

9 (j) service covered by an election duly
10 approved by the agency charged with the administration of any
11 other state or federal unemployment compensation law, in
12 accordance with an arrangement pursuant to Paragraph (1) of
13 Subsection A of Section 51-1-50 NMSA 1978 during the effective
14 period of [~~sueh~~] the election;

15 (k) service performed, as part of an
16 unemployment work-relief or work-training program assisted or
17 financed in whole or part by any federal agency or an agency of
18 a state or political subdivision thereof, by an individual
19 receiving [~~sueh~~] the work relief or work training;

20 (l) service performed by an individual
21 who is enrolled at a nonprofit or public educational
22 institution that normally maintains a regular faculty and
23 curriculum and normally has a regularly organized body of
24 students in attendance at the place where its educational
25 activities are carried on as a student in a full-time program,

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1 taken for credit at the institution that combines academic
2 instruction with work experience, if the service is an integral
3 part of such program and the institution has so certified to
4 the employer, except that this subparagraph shall not apply to
5 service performed in a program established for or on behalf of
6 an employer or group of employers;

7 (m) service performed in the employ of a
8 hospital, if the service is performed by a patient of the
9 hospital, or services performed by an inmate of a custodial or
10 penal institution for any employer;

11 (n) service performed by real estate
12 salesmen for others when the services are performed for
13 remuneration solely by way of commission;

14 (o) service performed in the employ of a
15 school, college or university if [~~such~~] the service is
16 performed by a student who is enrolled and is regularly
17 attending classes at [~~such~~] the school, college or university;

18 (p) service performed by an individual
19 for a fixed or contract fee officiating at a sporting event
20 that is conducted by or under the auspices of a nonprofit or
21 governmental entity if that person is not otherwise an employee
22 of the entity conducting the sporting event;

23 (q) service performed for a private,
24 for-profit person or entity by an individual as a product
25 demonstrator or product merchandiser if the service is

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1 performed pursuant to a written contract between that
2 individual and a person or entity whose principal business is
3 obtaining the services of product demonstrators and product
4 merchandisers for third parties, for demonstration and
5 merchandising purposes and the individual: 1) is compensated
6 for each job or the compensation is based on factors related to
7 the work performed; 2) provides the equipment used to perform
8 the service, unless special equipment is required and provided
9 by the manufacturer through an agency; 3) is responsible for
10 completion of a specific job and for any failure to complete
11 the job; 4) pays all expenses, and the opportunity for profit
12 or loss rests solely with the individual; and 5) is responsible
13 for operating costs, fuel, repairs and motor vehicle insurance.
14 For the purpose of this subparagraph, "product demonstrator"
15 means an individual who, on a temporary, part-time basis,
16 demonstrates or gives away samples of a food or other product
17 as part of an advertising or sales promotion for the product
18 and who is not otherwise employed directly by the manufacturer,
19 distributor or retailer, and "product merchandiser" means an
20 individual who, on a temporary, part-time basis builds or
21 resets a product display and who is not otherwise directly
22 employed by the manufacturer, distributor or retailer; or
23 (r) service performed for a private,
24 for-profit person or entity by an individual as a landman if
25 substantially all remuneration paid in cash or otherwise for

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1 the performance of the services is directly related to the
2 completion by the individual of the specific tasks contracted
3 for rather than to the number of hours worked by the
4 individual. For the purposes of this subparagraph, "landman"
5 means a land professional who has been engaged primarily in:
6 1) negotiating for the acquisition or divestiture of mineral
7 rights; 2) negotiating business agreements that provide for the
8 exploration for or development of minerals; 3) determining
9 ownership of minerals through the research of public and
10 private records; and 4) reviewing the status of title, curing
11 title defects and otherwise reducing title risk associated with
12 ownership of minerals; managing rights or obligations derived
13 from ownership of interests and minerals; or utilizing or
14 pooling of interest in minerals; and

15 (13) for the purposes of this subsection, if
16 the services performed during one-half or more of any pay
17 period by an individual for the person employing ~~[him]~~ the
18 individual constitute employment, all the services of ~~[such]~~
19 the individual for ~~[such]~~ the period shall be deemed to be
20 employment but, if the services performed during more than one-
21 half of any such pay period by an individual for the person
22 employing ~~[him]~~ the individual do not constitute employment,
23 then none of the services of ~~[such]~~ the individual for ~~[such]~~
24 the period shall be deemed to be employment. As used in this
25 paragraph, the term "pay period" means a period, of not more

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1 than thirty-one consecutive days, for which a payment of
2 remuneration is ordinarily made to the individual by the person
3 employing ~~[him]~~ the individual. This paragraph shall not be
4 applicable with respect to services performed in a pay period
5 by an individual for the person employing ~~[him]~~ the individual
6 where any of such service is excepted by Subparagraph (f) of
7 Paragraph (12) of this subsection;

8 G. "employment office" means a free public
9 employment office, or branch thereof, operated by this state or
10 maintained as a part of a state-controlled system of public
11 employment offices;

12 H. "fund" means the unemployment compensation fund
13 established by the Unemployment Compensation Law to which all
14 contributions and payments in lieu of contributions required
15 under the Unemployment Compensation Law and from which all
16 benefits provided under the Unemployment Compensation Law shall
17 be paid;

18 I. "unemployment" means, with respect to an
19 individual, any week during which ~~[he]~~ the individual performs
20 no services and with respect to which no wages are payable to
21 ~~[him]~~ the individual and during which ~~[he]~~ the individual is
22 not engaged in self-employment or receives an award of back pay
23 for loss of employment. The secretary shall prescribe by
24 ~~[regulation]~~ rule what constitutes part-time and intermittent
25 employment, partial employment and the conditions under which

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1 individuals engaged in such employment are eligible for partial
2 unemployment benefits, but no individual who is otherwise
3 eligible, shall be deemed ineligible for benefits solely for
4 the reason that the individual seeks, applies for or accepts
5 only part-time work, instead of full-time work, if the part-
6 time work is for at least twenty hours per week;

7 J. "state", when used in reference to any state
8 other than New Mexico, includes, in addition to the states of
9 the United States, the District of Columbia, the commonwealth
10 of Puerto Rico and the Virgin Islands;

11 K. "unemployment compensation administration fund"
12 means the fund established by Subsection A of Section 51-1-34
13 NMSA 1978 from which administrative expenses under the
14 Unemployment Compensation Law shall be paid. "Employment
15 security department fund" means the fund established by
16 Subsection B of Section 51-1-34 NMSA 1978 from which certain
17 administrative expenses under the Unemployment Compensation Law
18 shall be paid;

19 L. "crew leader" means a person who:

20 (1) holds a valid certificate of registration
21 as a crew leader or farm labor contractor under the federal
22 Migrant and Seasonal Agricultural Worker Protection Act;

23 (2) furnishes individuals to perform services
24 in agricultural labor for any other person;

25 (3) pays, either on [~~his~~] the crew leader's

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1 own behalf or on behalf of such other person, the individuals
2 so furnished by ~~[him]~~ the crew leader for service in
3 agricultural labor; and

4 (4) has not entered into a written agreement
5 with the other person for whom ~~[he]~~ the crew leader furnishes
6 individuals in agricultural labor that ~~[such]~~ the individuals
7 will be the employees of the other person;

8 M "week" means such period of seven consecutive
9 days, as the secretary may by ~~[regulation]~~ rule prescribe. The
10 secretary may by ~~[regulation]~~ rule prescribe that a week shall
11 be deemed to be "in", "within" or "during" the benefit year
12 that includes the greater part of such week;

13 N. "calendar quarter" means the period of three
14 consecutive calendar months ending on March 31, June 30,
15 September 30 or December 31;

16 O. "insured work" means services performed for
17 employers who are covered under the Unemployment Compensation
18 Law;

19 P. "benefit year" with respect to ~~[any]~~ an
20 individual means the one-year period beginning with the first
21 day of the first week of unemployment with respect to which the
22 individual first files a claim for benefits in accordance with
23 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
24 one-year period beginning with the first day of the first week
25 of unemployment with respect to which the individual next files

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1 such a claim for benefits after the termination of [~~his~~] the
2 individual's last preceding benefit year; provided that at the
3 time of filing such a claim the individual has been paid the
4 wage required under Paragraph (5) of Subsection A of Section
5 51-1-5 NMSA 1978;

6 Q. "agricultural labor" includes all services
7 performed:

8 (1) on a farm, in the employ of [~~any~~] a
9 person, in connection with cultivating the soil or in
10 connection with raising or harvesting [~~any~~] an agricultural or
11 horticultural commodity, including the raising, shearing,
12 feeding, caring for, training and management of livestock,
13 bees, poultry and fur-bearing animals and wildlife;

14 (2) in the employ of the owner or tenant or
15 other operator of a farm, in connection with the operation,
16 management, conservation or maintenance of [~~such~~] the farm and
17 its tools and equipment, if the major part of [~~such~~] the
18 service is performed on a farm;

19 (3) in connection with the operation or
20 maintenance of ditches, canals, reservoirs or waterways used
21 exclusively for supplying and storing water for farming
22 purposes when such ditches, canals, reservoirs or waterways are
23 owned and operated by the farmers using the water stored or
24 carried therein; and

25 (4) in handling, planting, drying, packing,

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1 packaging, processing, freezing, grading, storing or delivery
2 to storage or to market or to a carrier for transportation to
3 market any agricultural or horticultural commodity but only if
4 [~~such~~] the service is performed as an incident to ordinary
5 farming operations. The provisions of this paragraph shall not
6 be deemed to be applicable with respect to service performed in
7 connection with commercial canning or commercial freezing or in
8 connection with any agricultural or horticultural commodity
9 after its delivery to a terminal market for distribution for
10 consumption.

11 As used in this subsection, the term "farm" includes
12 stock, dairy, poultry, fruit, fur-bearing animal and truck
13 farms, plantations, ranches, nurseries, greenhouses, ranges and
14 orchards;

15 R. "payments in lieu of contributions" means the
16 money payments made into the fund by an employer pursuant to
17 the provisions of Subsection [A] B of Section 51-1-13 NMSA 1978
18 or Subsection E of Section 51-1-59 NMSA 1978;

19 S. "department" means the labor department; and

20 T. "wages" means all remuneration for services,
21 including commissions and bonuses and the cash value of all
22 remuneration in any medium other than cash. The reasonable
23 cash value of remuneration in any medium other than cash shall
24 be established and determined in accordance with [~~regulations~~]
25 rules prescribed by the secretary; provided that the term

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1 "wages" shall not include:

2 (1) subsequent to December 31, 1977, that part
3 of the remuneration in excess of the base wage as determined by
4 the secretary for each calendar year. The base wage upon which
5 contribution shall be paid during any calendar year shall be
6 sixty percent of the state's average annual earnings computed
7 by the division by dividing total wages reported to the
8 division by contributing employers for the second preceding
9 calendar year before the calendar year the computed base wage
10 becomes effective by the average annual employment reported by
11 contributing employers for the same period rounded to the next
12 higher multiple of one hundred dollars (\$100); provided that
13 the base wage so computed for any calendar year shall not be
14 less than seven thousand dollars (\$7,000). Wages paid by an
15 employer to an individual in his employ during any calendar
16 year in excess of the base wage in effect for that calendar
17 year shall be reported to the department but shall be exempt
18 from the payment of contributions unless such wages paid in
19 excess of the base wage become subject to tax under a federal
20 law imposing a tax against which credit may be taken for
21 contributions required to be paid into a state unemployment
22 fund;

23 (2) the amount of any payment with respect to
24 services performed after June 30, 1941 to or on behalf of an
25 individual in ~~its~~ the employ of an employing unit under a

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1 plan or system established by ~~an~~ the employing unit that
2 makes provision for individuals in its employ generally or for
3 a class or classes of ~~such~~ individuals, including any amount
4 paid by an employing unit for insurance or annuities, or into a
5 fund, to provide for any ~~such~~ payment, on account of:

6 (a) retirement if ~~such~~ the payments
7 are made by an employer to or on behalf of ~~any~~ an employee
8 under a simplified employee pension plan that provides for
9 payments by an employer in addition to the salary or other
10 remuneration normally payable to ~~such~~ the employee or class
11 of ~~such~~ employees and does not include any payments that
12 represent deferred compensation or other reduction of an
13 employee's normal taxable wages or remuneration or any payments
14 made to a third party on behalf of an employee as part of an
15 agreement of deferred remuneration;

16 (b) sickness or accident disability if
17 ~~such~~ the payments are received under a workers' compensation
18 or occupational disease disablement law;

19 (c) medical and hospitalization expenses
20 in connection with sickness or accident disability; or

21 (d) death; provided the individual in
22 its employ has not the option to receive, instead of provision
23 for ~~such~~ the death benefit, any part of such payment, or, if
24 such death benefit is insured, any part of the premiums or
25 contributions to premiums paid by ~~his~~ the individual's

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1 employing unit and has not the right under the provisions of
2 the plan or system or policy of insurance providing for [such]
3 the death benefit to assign [such] the benefit, or to receive a
4 cash consideration in lieu of [such] the benefit either upon
5 [his] the individual's withdrawal from the plan or system
6 providing for [such] the benefit or upon termination of [such]
7 the plan or system or policy of insurance or of [his] the
8 individual's service with [such] the employing unit;

9 (3) remuneration for agricultural labor paid
10 in any medium other than cash;

11 (4) [any] a payment made to, or on behalf of,
12 an employee or an employee's beneficiary under a cafeteria plan
13 within the meaning of Section 125 of the federal Internal
14 Revenue Code of 1986;

15 (5) [any] a payment made, or benefit furnished
16 to or for the benefit of an employee if at the time of [such]
17 the payment or such furnishing it is reasonable to believe that
18 the employee will be able to exclude [such] the payment or
19 benefit from income under Section 129 of the federal Internal
20 Revenue Code of 1986;

21 (6) [any] a payment made by an employer to a
22 survivor or the estate of a former employee after the calendar
23 year in which [such] the employee died;

24 (7) [any] a payment made to, or on behalf of,
25 an employee or [his] the employee's beneficiary under an

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1 arrangement to which Section 408(p) of the federal Internal
2 Revenue Code of 1986 applies, other than any elective
3 contributions under Paragraph (2)(A)(i) of that section;

4 (8) [~~any~~] a payment made to or for the benefit
5 of an employee if at the time of [~~such~~] the payment it is
6 reasonable to believe that the employee will be able to exclude
7 [~~such~~] the payment from income under Section 106 of the federal
8 Internal Revenue Code of 1986; or

9 (9) the value of any meals or lodging
10 furnished by or on behalf of the employer if at the time [~~such~~]
11 the benefit is provided it is reasonable to believe that the
12 employee will be able to exclude such items from income under
13 Section 119 of the federal Internal Revenue Code of 1986. "

14 Section 6. Section 51-1-48 NMSA 1978 (being Laws 1971,
15 Chapter 209, Section 7, as amended) is amended to read:

16 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

17 A. As used in this section, unless the context
18 clearly requires otherwise, [~~A-~~] "extended benefit period"
19 means a period [~~which~~] that:

20 (1) begins with the third week after a week
21 for which there is a state "on" indicator;

22 (2) ends with either of the following weeks,
23 whichever occurs later:

24 (a) the third week after the first week
25 for which there is a state "off" indicator; or

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1 (b) the thirteenth consecutive week of
2 such period; and

3 (3) [~~provided that no extended benefit period~~
4 ~~may~~] does not begin by reason of a state "on" indicator before
5 the fourteenth week following the end of a prior extended
6 benefit period [~~which~~] that was in effect with respect to this
7 state.

8 [~~B. There is a "state 'on' indicator" for this~~
9 ~~state for a week if the secretary determines, in accordance~~
10 ~~with the regulations of the United States secretary of labor,~~
11 ~~that for the period consisting of such week and the immediately~~
12 ~~preceding twelve weeks, the rate of insured unemployment (not~~
13 ~~seasonally adjusted) under this section:~~

14 (1) ~~equaled or exceeded five percent or~~
15 ~~equaled or exceeded one hundred twenty percent of the average~~
16 ~~of such rates for the corresponding thirteen week period ending~~
17 ~~in each of the preceding two calendar years and equaled or~~
18 ~~exceeded four percent; provided that for weeks of unemployment~~
19 ~~beginning after September 25, 1982, the provisions of~~
20 ~~subparagraph (2) of this subsection shall apply in determining~~
21 ~~a state "on" indicator; and~~

22 (2) ~~for weeks beginning after September 25,~~
23 ~~1982, equaled or exceeded six percent or equaled or exceeded~~
24 ~~one hundred twenty percent of the average of such rates for the~~
25 ~~corresponding thirteen week period ending in each of the~~

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1 ~~preceding two calendar years and equaled or exceeded five~~
2 ~~percent.~~

3 ~~C. There is a "state 'off' indicator" for this~~
4 ~~state for a week if the secretary determines, in accordance~~
5 ~~with the regulations of the United States secretary of labor,~~
6 ~~that for the period consisting of such week and the immediately~~
7 ~~preceding twelve weeks, the rate of insured unemployment (not~~
8 ~~seasonally adjusted) under this section:~~

9 ~~(1) was less than one hundred twenty percent~~
10 ~~of the average of such rates for the corresponding thirteen-~~
11 ~~week period ending in each of the preceding two calendar years;~~
12 ~~or~~

13 ~~(2) was less than four percent or, for weeks~~
14 ~~beginning after September 25, 1982, was less than five~~
15 ~~percent.]~~

16 B. There is a "state 'on' indicator" for this state
17 for a week if the rate of insured unemployment not seasonally
18 adjusted under this section for the period consisting of that
19 week and the immediately preceding twelve weeks:

20 (1) equaled or exceeded one hundred twenty
21 percent of the average of the rates for the corresponding
22 thirteen-week period ending in each of the preceding two
23 calendar years; and

24 (2) equaled or exceeded five percent; or

25 (3) equaled or exceeded six percent.

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1 regardless of the rate of insured unemployment in the two
2 previous years; or

3 (4) with respect to benefits for weeks of
4 unemployment beginning after January 1, 2002:

5 (a) the average rate of total
6 unemployment, seasonally adjusted, as determined by the United
7 States secretary of labor, for the period consisting of the
8 most recent three months for which data for all states are
9 published before the close of such week equals or exceeds six
10 and one-half percent; and

11 (b) the average rate of total
12 unemployment in this state, seasonally adjusted, as determined
13 by the United States secretary of labor, for the three-month
14 period referred to in Subparagraph (a) of this paragraph,
15 equals or exceeds one hundred ten percent of such average for
16 either or both of the corresponding three-month periods ending
17 in the two preceding calendar years.

18 C. There is a "state 'off' indicator" for this
19 state for a week only if, for the period consisting of that
20 week and the immediately preceding twelve weeks, none of the
21 options specified in Subsection B of this section result in a
22 "state 'on' indicator".

23 D. Except as provided in Subsection E of this
24 section, the total extended benefit amount payable to an
25 eligible individual with respect to the applicable benefit year

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1 shall be the least of the following amounts:

2 (1) fifty percent of the total amount of
3 regular benefits that were payable to the individual pursuant
4 to this section in the individual's applicable benefit year;

5 (2) thirteen times the individual's average
6 weekly benefit amount that was payable to the individual
7 pursuant to this section for a week of total unemployment in
8 the applicable benefit year; or

9 (3) thirty-nine times the individual's average
10 weekly benefit amount that was payable to the individual
11 pursuant to this section for a week of total unemployment in
12 the applicable benefit year, reduced by the total amount of
13 regular benefits that were paid, or deemed paid, to the
14 individual pursuant to this section with respect to the benefit
15 year; provided that the amount determined pursuant to this
16 paragraph shall be reduced by the total amount of additional
17 benefits paid, or deemed paid, to the individual under the
18 provisions of this section for weeks of unemployment in the
19 individual's benefit year that began prior to the effective
20 date of the extended benefit period that is current in the week
21 for which the individual first claims extended benefits; and
22 provided further, if the benefit year of the individual ends
23 within an extended benefit period, the remaining balance of the
24 extended benefits that the individual would, but for this
25 paragraph, be entitled to receive in that extended benefit

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1 period, with respect to weeks of unemployment beginning after
2 the end of the benefit year, shall be reduced, but not below
3 zero, by the product of the number of weeks for which the
4 individual received any amounts as readjustment allowances
5 within that benefit year multiplied by the individual weekly
6 benefit amount for extended benefits.

7 E. Effective with respect to weeks beginning in a
8 high-unemployment period, the total extended benefit amount
9 payable to an eligible individual with respect to the
10 applicable benefit year shall be the least of the following
11 amounts:

12 (1) eighty percent of the total amount of
13 regular benefits that were payable to the individual pursuant
14 to this section in the individual's applicable benefit year;

15 (2) twenty times the individual's average
16 weekly benefit amount that was payable to the individual
17 pursuant to this section for a week of total unemployment in
18 the applicable benefit year; or

19 (3) forty-six times the individual's average
20 weekly benefit amount that was payable to the individual
21 pursuant to this section for a week of total unemployment in
22 the applicable benefit year reduced by the total amount of
23 regular benefits that were paid, or deemed paid, to the
24 individual pursuant to this section with respect to the benefit
25 year; provided that the amount determined pursuant to this

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1 paragraph shall be reduced by the total amount of additional
2 benefits paid, or deemed paid, to the individual under the
3 provisions of this section for weeks of unemployment in the
4 individual's benefit year that began prior to the effective
5 date of the extended benefit period that is current in the week
6 for which the individual first claims extended benefits; and
7 provided further, if the benefit year of an individual ends
8 within an extended benefit period, the remaining balance of the
9 extended benefits that the individual would, but for this
10 paragraph, be entitled to receive in that extended benefit
11 period, with respect to weeks of unemployment beginning after
12 the end of the benefit year, shall be reduced, but not below
13 zero, by the product of the number of weeks for which the
14 individual received any amounts as readjustment allowances
15 within that benefit year multiplied by the individual weekly
16 benefit amount for extended benefits.

17 F. For purposes of Subsection E of this section,
18 "high-unemployment period" means a period during which an
19 extended benefit period would be in effect if Paragraph (4) of
20 Subsection B of this section were applied by substituting
21 "eight percent" for "six and one-half percent".

22 G. A benefit paid to an individual pursuant to this
23 section shall be charged pursuant to Subsection B of Section
24 51-1-11 NMSA 1978.

25 [D.] H. As used in this section:

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1 (1) "rate of insured unemployment" [~~for~~
2 ~~purposes of Subsections B and C of this section~~] means the
3 percentage derived by dividing:

4 [~~(1)~~] (a) the average weekly number of
5 individuals filing claims for regular benefits in this state
6 for weeks [~~for~~] of unemployment with respect to the most recent
7 thirteen-consecutive-week period, as determined by the
8 secretary on the basis of his reports to the United States
9 secretary of labor; by

10 [~~(2)~~] (b) the average monthly employment
11 covered under the Unemployment Compensation Law for the first
12 four of the most recent six completed calendar quarters ending
13 before the end of such thirteen-week period;

14 [~~E.-~~] (2) "regular benefits" means benefits
15 payable to an individual under the Unemployment Compensation
16 Law or under any other state law, including benefits payable to
17 federal civilian employees and to ex-servicemen pursuant to 5
18 U.S.C., Chapter 85, other than extended benefits;

19 [~~F.-~~] (3) "extended benefits" means benefits,
20 including benefits payable to federal civilian employees and to
21 ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to an
22 individual under the provisions of this section for weeks of
23 unemployment in [~~his~~] the individual's eligibility period;

24 [~~G.-~~] (4) "eligibility period" of an individual
25 means the period consisting of the weeks in [~~his~~] the

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1 individual's benefit year [~~which~~] that begin in an extended
2 benefit period and, if [~~his~~] the individual's benefit year ends
3 within such extended benefit period, any weeks thereafter
4 [~~which~~] that begin in such period;

5 [~~H-~~] (5) "exhaustee" means an individual who,
6 with respect to any week of unemployment in [~~his~~] the
7 individual's eligibility period:

8 [~~(1)~~] (a) has received, prior to such
9 week, all of the regular benefits that were available to [~~him~~]
10 the individual under the Unemployment Compensation Law or any
11 other state law, including dependent's allowance and benefits
12 payable to federal civilian employees and ex-servicemen under 5
13 U.S.C., Chapter 85, in [~~his~~] the individual's current benefit
14 year that includes such week; provided that, for the purposes
15 of this subparagraph, an individual shall be deemed to have
16 received all of the regular benefits that were available to
17 [~~him~~] the individual, although, as a result of a pending appeal
18 with respect to wages that were not considered in the original
19 monetary determination in [~~his~~] the individual's benefit year,
20 [~~he~~] the individual may subsequently be determined to be
21 entitled to added regular benefits; or

22 [~~(2)~~—~~his~~] (b) if the individual's
23 benefit year [~~having~~] has expired prior to such week, has no,
24 or insufficient, wages on the basis of which [~~he~~] the
25 individual could establish a new benefit year that would

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1 include such week; and

2 [~~(3)~~] (c) has no right to unemployment
3 benefits or allowances, as the case may be, under the Railroad
4 Unemployment Insurance Act, the Trade Expansion Act of 1962,
5 the Trade Act of 1974, the Automotive Products Trade Act of
6 1965 and such other federal laws as are specified in
7 regulations issued by the United States secretary of labor; and
8 has not received and is not seeking unemployment benefits under
9 the unemployment compensation law of Canada, but if ~~[he]~~ the
10 individual is seeking such benefits and the appropriate agency
11 finally determines that ~~[he]~~ the individual is not entitled to
12 benefits under such law, ~~[he]~~ the individual is considered an
13 exhaustee; and

14 [~~F.~~] (6) "state law" means the unemployment
15 insurance law of any state, approved by the United States
16 secretary of labor under Section 3304 of the Internal Revenue
17 Code of [~~1954~~] 1986. "

18 Section 7. Section 51-1-4 NMSA 1978 (being Laws 1969,
19 Chapter 213, Section 1, as amended, and as further amended by
20 Section 1 of this act) is repealed and a new Section 51-1-4
21 NMSA 1978 is enacted to read:

22 "51-1-4. [NEW MATERIAL] MONETARY COMPUTATION OF
23 BENEFITS--PAYMENT GENERALLY. --

24 A. All benefits provided herein are payable from
25 the unemployment compensation fund. All benefits shall be paid

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1 in accordance with rules prescribed by the secretary through
2 employment offices or other agencies as the secretary approves
3 by general rule.

4 B. Weekly benefits shall be as follows:

5 (1) an individual's "weekly benefit amount" is
6 an amount equal to one twenty-sixth of the total wages for
7 insured work paid to the individual in that quarter of the
8 individual's base period in which total wages were highest. No
9 benefit as so computed may be less than ten percent or more
10 than fifty-two and one-half percent of the state's average
11 weekly wage for all insured work. The state's average weekly
12 wage shall be computed from all wages reported to the
13 department from employing units in accordance with rules of the
14 secretary for the period ending June 30 of each calendar year
15 divided by the total number of covered employees divided by
16 fifty-two, effective for the benefit years commencing on or
17 after the first Sunday of the following calendar year. An
18 individual is not eligible to receive benefits unless the
19 individual has wages in at least two quarters of that
20 individual's base period. For the purposes of this subsection,
21 "total wages" means all remuneration for insured work,
22 including commissions and bonuses and the cash value of all
23 remuneration in a medium other than cash;

24 (2) an eligible individual who is unemployed
25 in any week during which the individual is in a continued

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1 claims status shall be paid, with respect to the week, a
2 benefit in an amount equal to the individual's weekly benefit
3 amount, less that part of the wages, if any, or earnings from
4 self-employment, payable to the individual with respect to such
5 week that is in excess of one-fifth of the individual's weekly
6 benefit amount. For purposes of this subsection only, "wages"
7 includes all remuneration for services actually performed in a
8 week for which benefits are claimed, vacation pay for a period
9 for which the individual has a definite return-to-work date,
10 wages in lieu of notice and back pay for loss of employment but
11 does not include payments through a court for time spent in
12 jury service;

13 (3) notwithstanding any other provision of
14 this section, an eligible individual who, pursuant to a plan
15 financed in whole or in part by a base-period employer of the
16 individual, is receiving a governmental or other pension,
17 retirement pay, annuity or any other similar periodic payment
18 that is based on the previous work of the individual and who is
19 unemployed with respect to any week ending subsequent to April
20 9, 1981 shall be paid with respect to the week, in accordance
21 with rules prescribed by the secretary, compensation equal to
22 the individual's weekly benefit amount reduced, but not below
23 zero, by the prorated amount of the pension, retirement pay,
24 annuity or other similar periodic payment that exceeds the
25 percentage contributed to the plan by the eligible individual.

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1 The maximum benefit amount payable to the eligible individual
2 shall be an amount not more than twenty-six times his reduced
3 weekly benefit amount. If payments referred to in this section
4 are being received by an individual under the federal Social
5 Security Act, the division shall take into account the
6 individual's contribution and make no reduction in the weekly
7 benefit amount;

8 (4) in the case of a lump-sum payment of a
9 pension, retirement or retired pay, annuity or other similar
10 payment by a base-period employer that is based on the previous
11 work of the individual, the payment shall be allocated, in
12 accordance with rules prescribed by the secretary, and shall
13 reduce the amount of unemployment compensation paid, but not
14 below zero, in accordance with Paragraph (3) of this
15 subsection; and

16 (5) the retroactive payment of a pension,
17 retirement or retired pay, annuity or any other similar
18 periodic payment as provided in Paragraphs (3) and (4) of this
19 subsection attributable to weeks during which an individual has
20 claimed or has been paid unemployment compensation shall be
21 allocated to those weeks and shall reduce the amount of
22 unemployment compensation for those weeks, but not below zero,
23 by an amount equal to the prorated amount of the pension. Any
24 overpayment of unemployment compensation benefits resulting
25 from the application of the provisions of this paragraph shall

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1 be recovered from the claimant in accordance with the
2 provisions of Section 51-1-38 NMSA 1978.

3 C. An otherwise eligible individual is entitled
4 during any benefit year to a total amount of benefits equal to
5 whichever is the lesser of twenty-six times the individual's
6 weekly benefit amount or sixty percent of the individual's
7 wages for insured work paid during the individual's base
8 period.

9 D. A benefit as determined in Subsection B or C of
10 this section, if not a multiple of one dollar (\$1.00), shall be
11 rounded to the next lower multiple of one dollar (\$1.00).

12 E. The secretary may prescribe rules to provide for
13 the payment of benefits that are due and payable to the legal
14 representative, dependents, relatives or next of kin of
15 claimants since deceased. These rules need not conform with
16 the laws governing successions, and the payment shall be deemed
17 a valid payment to the same extent as if made under a formal
18 administration of the succession of the claimant.

19 F. The division, on its own initiative, may
20 reconsider a monetary determination whenever it is determined
21 that an error in computation or identity has occurred or that
22 wages of the claimant pertinent to such determination but not
23 considered have been newly discovered or that the benefits have
24 been allowed or denied on the basis of misrepresentation of
25 fact, but no redetermination shall be made after one year from

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1 the date of the original monetary determination. Notice of a
2 redetermination shall be given to all interested parties and
3 shall be subject to an appeal in the same manner as the
4 original determination. In the event that an appeal involving
5 an original monetary determination is pending at the time a
6 redetermination is issued, the appeal, unless withdrawn, shall
7 be treated as an appeal from redetermination."

8 Section 8. Section 51-1-5 NMSA 1978 (being Laws 1969,
9 Chapter 213, Section 2, as amended, and as further amended by
10 Section 2 of this act) is repealed and a new Section 51-1-5
11 NMSA 1978 is enacted to read:

12 "51-1-5. [NEW MATERIAL] BENEFIT ELIGIBILITY CONDITIONS. --

13 A. An unemployed individual shall be eligible to
14 receive benefits with respect to any week only if the
15 individual:

16 (1) has made a claim for benefits with respect
17 to such week in accordance with such rules as the secretary may
18 prescribe;

19 (2) has registered for work at, and thereafter
20 continued to report at, an employment office in accordance with
21 such rules as the secretary may prescribe, except that the
22 secretary may, by rule, waive or alter either or both of the
23 requirements of this paragraph as to individuals attached to
24 regular jobs and as to such other types of cases or situations
25 with respect to which the secretary finds that compliance with

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1 such requirements would be oppressive or would be inconsistent
2 with the purposes of the Unemployment Compensation Law. No
3 such rule shall conflict with Subsection A of Section 51-1-4
4 NMSA 1978;

5 (3) is able to work and is available for work
6 and is actively seeking permanent and substantially full-time
7 work in accordance with the terms, conditions and hours common
8 in the occupation or business in which the individual is
9 seeking work, except that the secretary may, by rule, waive
10 this requirement for individuals who are on temporary layoff
11 status from their regular employment with an assurance from
12 their employers that the layoff shall not exceed four weeks or
13 who have an express offer in writing of substantially full-time
14 work that will begin within a period not exceeding four weeks;

15 (4) has been unemployed for a waiting period
16 of one week. A week shall not be counted as a week of
17 unemployment for the purposes of this paragraph:

18 (a) unless it occurs within the benefit
19 year that includes the week with respect to which the
20 individual claims payment of benefits;

21 (b) if benefits have been paid with
22 respect thereto; and

23 (c) unless the individual was eligible
24 for benefits with respect thereto as provided in this section
25 and Section 51-1-7 NMSA 1978, except for the requirements of

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1 this subsection and of Subsection D of Section 51-1-7 NMSA
2 1978;

3 (5) has been paid wages in at least two
4 quarters of the individual's base period;

5 (6) has reported to an office of the division
6 in accordance with the rules of the secretary for the purpose
7 of an examination and review of the individual's availability
8 for and search for work, for employment counseling, referral
9 and placement and for participation in a job finding or
10 employability training and development program. An individual
11 shall not be denied benefits under this section for any week
12 that the individual is participating in a job finding or
13 employability training and development program; and

14 (7) participates in reemployment services,
15 such as job search assistance services, if the division
16 determines that the individual is likely to exhaust regular
17 benefits and need reemployment services pursuant to a profiling
18 system established by the division, unless the division
19 determines that:

20 (a) the individual has completed such
21 services; or

22 (b) there is justifiable cause for the
23 individual's failure to participate in the services.

24 B. A benefit year as provided in Section 51-1-4
25 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be

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1 established; provided an individual may not receive benefits in
2 a benefit year unless, subsequent to the beginning of the
3 immediately preceding benefit year during which the individual
4 received benefits, the individual performed service in
5 "employment", as defined in Subsection F of Section 51-1-42
6 NMSA 1978, and earned remuneration for such service in an
7 amount equal to at least five times the individual's weekly
8 benefit amount.

9 C. Benefits based on service in employment defined
10 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
11 51-1-43 NMSA 1978 are to be paid in the same amount, on the
12 same terms and subject to the same conditions as compensation
13 payable on the basis of other services subject to the
14 Unemployment Compensation Law; except that:

15 (1) benefits based on services performed in an
16 instructional, research or principal administrative capacity
17 for an educational institution shall not be paid for any week
18 of unemployment commencing during the period between two
19 successive academic years or terms or, when an agreement
20 provides for a similar period between two regular but not
21 successive terms, during such period or during a period of paid
22 sabbatical leave provided for in the individual's contract, to
23 any individual if the individual performs such services in the
24 first of such academic years or terms and if there is a
25 contract or a reasonable assurance that the individual will

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1 perform services in any such capacity for any educational
2 institution in the second of such academic years or terms;

3 (2) benefits based on services performed for
4 an educational institution other than in an instructional,
5 research or principal administrative capacity shall not be paid
6 for any week of unemployment commencing during a period between
7 two successive academic years or terms if the services are
8 performed in the first of such academic years or terms and
9 there is a reasonable assurance that the individual will
10 perform services for any educational institution in the second
11 of such academic years or terms. If compensation is denied to
12 an individual under this paragraph and the individual was not
13 offered an opportunity to perform such services for the
14 educational institution for the second of such academic years
15 or terms, the individual shall be entitled to a retroactive
16 payment of benefits for each week for which the individual
17 filed a claim and certified for benefits in accordance with the
18 rules of the division and for which benefits were denied solely
19 by reason of this paragraph;

20 (3) benefits shall be denied to any individual
21 for any week that commences during an established and customary
22 vacation period or holiday recess if the individual performs
23 any services described in Paragraphs (1) and (2) of this
24 subsection in the period immediately before such period of
25 vacation or holiday recess and there is a reasonable assurance

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1 that the individual will perform any such services in the
2 period immediately following such vacation period or holiday
3 recess;

4 (4) benefits shall not be payable on the basis
5 of services specified in Paragraphs (1) and (2) of this
6 subsection during the periods specified in Paragraphs (1), (2)
7 and (3) of this subsection to any individual who performed such
8 services in or to or on behalf of an educational institution
9 while in the employ of a state or local governmental
10 educational service agency or other governmental entity or
11 nonprofit organization; and

12 (5) for the purpose of this subsection, to the
13 extent permitted by federal law, "reasonable assurance" means a
14 reasonable expectation of employment in a similar capacity in
15 the second of such academic years or terms based upon a
16 consideration of all relevant factors, including the historical
17 pattern of reemployment in such capacity, a reasonable
18 anticipation that such employment will be available and a
19 reasonable notice or understanding that the individual will be
20 eligible for and offered employment in a similar capacity.

21 D. Paragraphs (1), (2), (3), (4) and (5) of
22 Subsection C of this section shall apply to services performed
23 for all educational institutions, public or private, for profit
24 or nonprofit, which are operated in this state or subject to an
25 agreement for coverage under the Unemployment Compensation Law

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1 of this state, unless otherwise exempt by law.

2 E. Notwithstanding any other provisions of this
3 section or Section 51-1-7 NMSA 1978, no otherwise eligible
4 individual is to be denied benefits for any week because the
5 individual is in training with the approval of the division nor
6 is the individual to be denied benefits by reason of
7 application of provisions in Paragraph (3) of Subsection A of
8 this section or Subsection C of Section 51-1-7 NMSA 1978 with
9 respect to any week in which the individual is in training with
10 the approval of the division. The secretary shall provide, by
11 rule, standards for approved training and the conditions for
12 approving training for claimants, including any training
13 approved or authorized for approval pursuant to Section
14 236(a)(1) and (2) of the Trade Act of 1974, as amended, or
15 required to be approved as a condition for certification of the
16 state's Unemployment Compensation Law by the United States
17 secretary of labor.

18 F. Notwithstanding any other provisions of this
19 section, benefits shall not be payable on the basis of services
20 performed by an alien unless such alien is an individual who
21 was lawfully admitted for permanent residence at the time the
22 services were performed, was lawfully present for the purposes
23 of performing the services or was permanently residing in the
24 United States under color of law at the time the services were
25 performed, including an alien who was lawfully present in the

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1 United States as a result of the application of the provisions
2 of Section 212(d) (5) of the Immigration and Nationality Act;
3 provided that:

4 (1) any information required of individuals
5 applying for benefits to determine their eligibility for
6 benefits under this subsection shall be uniformly required from
7 all applicants for benefits; and

8 (2) an individual shall not be denied benefits
9 because of the individual's alien status except upon a
10 preponderance of the evidence.

11 G. Notwithstanding any other provision of this
12 section, benefits shall not be paid to any individual on the
13 basis of any services substantially all of which consist of
14 participating in sports or athletic events or training or
15 preparing to so participate for any week that commences during
16 the period between two successive sport seasons, or similar
17 periods, if the individual performed the services in the first
18 of such seasons, or similar periods, and there is a reasonable
19 assurance that the individual will perform the services in the
20 latter of such seasons or similar periods.

21 H. Students who are enrolled in a full-time course
22 schedule in an educational or training institution or program,
23 other than those persons in an approved vocational training
24 program in accordance with Subsection E of this section, shall
25 not be eligible for unemployment benefits except as provided by

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1 regulations promulgated by the secretary.

2 I. As used in this subsection, "seasonal ski
3 employee" means an employee who has not worked for a ski area
4 operator for more than six consecutive months of the previous
5 twelve months or nine of the previous twelve months. An
6 employee of a ski area operator who has worked for a ski area
7 operator for six consecutive months of the previous twelve
8 months or nine of the previous twelve months shall not be
9 considered a seasonal ski employee. The following benefit
10 eligibility conditions apply to a seasonal ski employee:

11 (1) except as provided in Paragraphs (2) and
12 (3) of this subsection, a seasonal ski employee employed by a
13 ski area operator on a regular seasonal basis shall be
14 ineligible for a week of unemployment benefits that commences
15 during a period between two successive ski seasons unless the
16 individual establishes to the satisfaction of the secretary
17 that the individual is available for and is making an active
18 search for permanent full-time work;

19 (2) a seasonal ski employee who has been
20 employed by a ski area operator during two successive ski
21 seasons shall be presumed to be unavailable for permanent new
22 work during a period after the second successive ski season
23 that the individual was employed as a seasonal ski employee;
24 and

25 (3) the presumption described in Paragraph (2)

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1 of this subsection shall not arise as to any seasonal ski
2 employee who has been employed by the same ski area operator
3 during two successive ski seasons and has resided continuously
4 for at least twelve successive months and continues to reside
5 in the county in which the ski area facility is located.

6 J. Notwithstanding any other provision of this
7 section, an otherwise eligible individual shall not be denied
8 benefits for any week by reason of the application of Paragraph
9 (3) of Subsection A of this section because the individual is
10 before any court of the United States or any state pursuant to
11 a lawfully issued summons to appear for jury duty. "

12 Section 9. Section 51-1-7 NMSA 1978 (being Laws 1936
13 (S.S.), Chapter 1, Section 5, as amended, and as further
14 amended by Section 3 of this act) is repealed and a new Section
15 51-1-7 NMSA 1978 is enacted to read:

16 "51-1-7. [NEW MATERIAL] DISQUALIFICATION FOR BENEFITS. --

17 A. An individual shall be disqualified for, and
18 shall not be eligible to receive, benefits:

19 (1) if it is determined by the division that
20 the individual left employment voluntarily without good cause
21 in connection with the employment; provided, however, that a
22 person shall not be denied benefits under this paragraph solely
23 on the basis of pregnancy or the termination of pregnancy;

24 (2) if it is determined by the division that
25 the individual has been discharged for misconduct connected

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1 with the individual's employment; or

2 (3) if it is determined by the division that
3 the individual has failed without good cause either to apply
4 for available, suitable work when so directed or referred by
5 the division or to accept suitable work when offered.

6 B. In determining whether or not any work is
7 suitable for an individual pursuant to Paragraph (3) of
8 Subsection A of this section, the division shall consider the
9 degree of risk involved to the individual's health, safety and
10 morals, the individual's physical fitness, prior training,
11 experience, prior earnings, length of unemployment and
12 prospects for securing local work in the individual's customary
13 occupation and the distance of available work from the
14 individual's residence. Notwithstanding any other provisions
15 of the Unemployment Compensation Law, no work shall be deemed
16 suitable and benefits shall not be denied under the
17 Unemployment Compensation Law to any otherwise eligible
18 individual for refusing to accept new work under any of the
19 following conditions:

20 (1) if the position offered is vacant due
21 directly to a strike, lockout or other labor dispute;

22 (2) if the wages, hours or other conditions of
23 the work offered are substantially less favorable to the
24 individual than those prevailing for similar work in the
25 locality; or

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1 (3) if, as a condition of being employed, the
2 individual would be required to join a company union or to
3 resign from or refrain from joining any bona fide labor
4 organizations.

5 C. An individual shall be disqualified for, and
6 shall not be eligible to receive, benefits for any week with
7 respect to which the division finds that the individual's
8 unemployment is due to a labor dispute at the factory,
9 establishment or other premises at which the individual is or
10 was last employed; provided that this subsection shall not
11 apply if it is shown to the satisfaction of the division that:

12 (1) the individual is not participating in or
13 directly interested in the labor dispute; and

14 (2) the individual does not belong to a grade
15 or class of workers of which, immediately before the
16 commencement of the labor dispute, there were members employed
17 at the premises at which the labor dispute occurs, any of whom
18 are participating in or directly interested in the dispute;
19 provided that if in any case separate branches of work that are
20 commonly conducted in separate businesses in separate premises
21 are conducted in separate departments of the same premises,
22 each such department shall, for the purposes of this
23 subsection, be deemed to be a separate factory, establishment
24 or other premises.

25 D. An individual shall be disqualified for, and

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1 shall not be eligible to receive, benefits for any week with
2 respect to which, or a part of which, the individual has
3 received or is seeking, through any agency other than the
4 division, unemployment benefits under an unemployment
5 compensation law of another state or of the United States;
6 provided that if the appropriate agency of such other state or
7 of the United States finally determines that the individual is
8 not entitled to such unemployment benefits, this
9 disqualification shall not apply.

10 E. A disqualification pursuant to Paragraph (1) or
11 (2) of Subsection A of this section shall continue for the
12 duration of the individual's unemployment and until the
13 individual has earned wages in bona fide employment other than
14 self-employment, as provided by rule of the secretary, in an
15 amount equivalent to five times the individual's weekly benefit
16 otherwise payable. A disqualification pursuant to Paragraph
17 (3) of Subsection A of this section shall include the week the
18 failure occurred and shall continue for the duration of the
19 individual's unemployment and until the individual has earned
20 wages in bona fide employment other than self-employment, as
21 provided by rule of the secretary, in an amount equivalent to
22 five times the individual's weekly benefit amount otherwise
23 payable; provided that no more than one such disqualification
24 shall be imposed upon an individual for failure to apply for or
25 accept the same position, or a similar position, with the same

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1 employer, except upon a determination by the division of
2 disqualification pursuant to Subsection C of this section.

3 F. As used in this section, "employment" means
4 employment by the individual's last employer as defined by
5 rules of the secretary. "

6 Section 10. Section 51-1-11 NMSA 1978 (being Laws 1961,
7 Chapter 139, Section 3, as amended, and as further amended by
8 Section 4 of this act) is repealed and a new Section 51-1-11
9 NMSA 1978 is enacted to read:

10 "51-1-11. [NEW MATERIAL] FUTURE RATES BASED ON BENEFIT
11 EXPERIENCE. --

12 A. The division shall maintain a separate account
13 for each contributing employer and shall credit the
14 contributing employer's account with all contributions paid by
15 that employer under the Unemployment Compensation Law. Nothing
16 in the Unemployment Compensation Law shall be construed to
17 grant an employer or individuals in the employer's service
18 prior claims or rights to the amounts paid by the employer into
19 the fund.

20 B. Benefits paid to an individual shall be charged
21 against the accounts of the individual's base-period employers
22 on a pro rata basis according to the proportion of the
23 individual's total base-period wages received from each
24 employer, except that no benefits paid to a claimant as
25 extended benefits under the provisions of Section 51-1-48 NMSA

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1 1978 shall be charged to the account of any base-period
2 employer who is not on a reimbursable basis and who is not a
3 governmental entity and, except as the secretary shall by rule
4 prescribe otherwise, in the case of benefits paid to an
5 individual who:

6 (1) left the employ of a base-period employer
7 who is not on a reimbursable basis voluntarily without good
8 cause in connection with the individual's employment;

9 (2) was discharged from the employment of a
10 base-period employer who is not on a reimbursable basis for
11 misconduct connected with the individual's employment;

12 (3) is employed part time by a base-period
13 employer who is not on a reimbursable basis and who continues
14 to furnish the individual the same part-time work while the
15 individual is separated from full-time work for a
16 nondisqualifying reason; or

17 (4) received benefits based upon wages earned
18 from a base-period employer who is not on a reimbursable basis
19 while attending approved training under the provisions of
20 Subsection E of Section 51-1-5 NMSA 1978.

21 C. The division shall not charge a contributing or
22 reimbursing base-period employer's account with any portion of
23 benefit amounts that the division can bill to or recover from
24 the federal government as either regular or extended benefits.

25 D. All contributions to the fund shall be pooled

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1 and available to pay benefits to any individual entitled
2 thereto, irrespective of the source of such contributions. The
3 standard rate of contributions payable by each employer shall
4 be five and four-tenths percent.

5 E. An employer's rate shall not be varied from the
6 standard rate for any calendar year unless, as of the
7 computation date for that year, the employer's account has been
8 chargeable with benefits throughout the preceding thirty-six
9 months, except that:

10 (1) the provisions of this subsection shall
11 not apply to governmental entities;

12 (2) subsequent to December 31, 1984, any
13 employing unit that becomes an employer subject to the payment
14 of contributions under the Unemployment Compensation Law or has
15 been an employer subject to the payment of contributions at a
16 standard rate of two and seven-tenths percent through December
17 31, 1984 shall be subject to the payment of contributions at
18 the reduced rate of two and seven-tenths percent until, as of
19 the computation date of a particular year, the employer's
20 account has been chargeable with benefits throughout the
21 preceding thirty-six months; and

22 (3) any individual, type of organization or
23 employing unit that acquires all or part of the trade or
24 business of another employing unit, pursuant to Paragraphs (2)
25 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has

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1 a reduced rate of contribution shall be entitled to the
2 transfer of the reduced rate to the extent permitted under
3 Subsection G of this section.

4 F. The secretary shall, for the year 1942 and for
5 each calendar year thereafter, classify employers in accordance
6 with their actual experience in the payment of contributions
7 and with respect to benefits charged against their accounts,
8 with a view of fixing such contribution rates as will reflect
9 such benefit experience. An employer's rate for any calendar
10 year shall be determined on the basis of the employer's record
11 and the condition of the fund as of the computation date for
12 such calendar year.

13 An employer may make voluntary payments in addition to the
14 contributions required under the Unemployment Compensation Law,
15 which shall be credited to the employer's account in accordance
16 with department rule. The voluntary payments shall be included
17 in the employer's account as of the employer's most recent
18 computation date if they are made on or before the following
19 March 1. Voluntary payments when accepted from an employer
20 shall not be refunded in whole or in part.

21 G. In the case of a transfer of an employing
22 enterprise, the experience history of the transferred
23 enterprise as provided in Subsection F of this section shall be
24 transferred from the predecessor employer to the successor
25 under the following conditions and in accordance with the

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1 applicable rules of the secretary:

2 (1) Definitions:

3 (a) "employing enterprise" is a business
4 activity engaged in by a contributing employing unit in which
5 one or more persons have been employed within the current or
6 the three preceding calendar quarters;

7 (b) "predecessor" means the owner and
8 operator of an employing enterprise immediately prior to the
9 transfer of such enterprise;

10 (c) "successor" means any individual or
11 any type of organization that acquires an employing enterprise
12 and continues to operate such business entity; and

13 (d) "experience history" means the
14 experience rating record and reserve account, including the
15 actual contributions, benefit charges and payroll experience of
16 the employing enterprise.

17 (2) For the purpose of this section, two or
18 more employers who are parties to or the subject of any
19 transaction involving the transfer of an employing enterprise
20 shall be deemed to be a single employer and the experience
21 history of the employing enterprise shall be transferred to the
22 successor employer if the successor employer has acquired by
23 the transaction all of the business enterprises of the
24 predecessor; provided that:

25 (a) all contributions, interest and

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1 penalties due from the predecessor employer have been paid;

2 (b) notice of the transfer has been
3 given in accordance with the rules of the secretary within four
4 years of the transaction transferring the employing enterprise
5 or the date of the actual transfer of control and operation of
6 the employing enterprise;

7 (c) in the case of the transfer of an
8 employing enterprise, the successor employer must notify the
9 division of the acquisition on or before the due date of the
10 successor employer's first wage and contribution report. If
11 the successor employer fails to notify the division of the
12 acquisition within this time limit, the division, when it
13 receives actual notice, shall effect the transfer of the
14 experience history and applicable rate of contribution
15 retroactively to the date of the acquisition, and the successor
16 shall pay a penalty of fifty dollars (\$50.00); and

17 (d) where the transaction involves only
18 a merger, consolidation or other form of reorganization without
19 a substantial change in the ownership and controlling interest
20 of the business entity, as determined by the secretary, the
21 limitations on transfers stated in Subparagraphs (a), (b) and
22 (c) of this paragraph shall not apply. A party to a merger,
23 consolidation or other form of reorganization described in this
24 paragraph shall not be relieved of liability for any
25 contributions, interest or penalties due and owing from the

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1 employing enterprise at the time of the merger, consolidation
2 or other form of reorganization.

3 (3) The applicable experience history may be
4 transferred to the successor in the case of a partial transfer
5 of an employing enterprise if the successor has acquired one or
6 more of the several employing enterprises of a predecessor but
7 not all of the employing enterprises of the predecessor and
8 each employing enterprise so acquired was operated by the
9 predecessor as a separate store, factory, shop or other
10 separate employing enterprise and the predecessor, throughout
11 the entire period of the contribution with liability applicable
12 to each enterprise transferred, has maintained and preserved
13 payroll records that, together with records of contribution
14 liability and benefit chargeability, can be separated by the
15 parties from the enterprises retained by the predecessor to the
16 satisfaction of the secretary or the secretary's delegate. A
17 partial experience history transfer will be made only if:

18 (a) the successor notifies the division
19 of the acquisition, in writing, not later than the due date of
20 the successor's first quarterly wage and contribution report
21 after the effective date of the acquisition;

22 (b) the successor files an application
23 provided by the division that contains the endorsement of the
24 predecessor within thirty days from the delivery or mailing of
25 such application by the division to the successor's last known

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1 address; and

2 (c) the successor files with the
3 application a Form ES-903A or its equivalent with a schedule of
4 the name and social security number of and the wages paid to
5 and the contributions paid for each employee for the three and
6 one-half year period preceding the computation date as defined
7 in Subparagraph (d) of Paragraph (3) of Subsection H of this
8 section through the date of transfer or such lesser period as
9 the enterprises transferred may have been in operation. The
10 application and Form ES-903A shall be supported by the
11 predecessor's permanent employment records, which shall be
12 available for audit by the division. The application and Form
13 ES-903A shall be reviewed by the division and, upon approval,
14 the percentage of the predecessor's experience history
15 attributable to the enterprises transferred shall be
16 transferred to the successor. The percentage shall be obtained
17 by dividing the taxable payrolls of the transferred enterprises
18 for such three and one-half year period preceding the date of
19 computation or such lesser period as the enterprises
20 transferred may have been in operation by the predecessor's
21 entire payroll.

22 H. For each calendar year, adjustments of
23 contribution rates below the standard or reduced rate and
24 measures designed to protect the fund are provided in
25 Paragraphs (1) through (4) of this subsection.

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1 (1) The total assets in the fund and the total
2 of the last annual payrolls of all employers subject to
3 contributions as of the computation date for each year shall be
4 determined. These annual totals are here called "the fund" and
5 "total payrolls". For each year, the "reserve" of each
6 employer qualified under Subsection E of this section shall be
7 fixed by the excess of the employer's total contributions over
8 total benefit charges computed as a percentage of the
9 employer's average payroll reported for contributions. The
10 determination of each employer's annual rate, computed as of
11 the computation date for each calendar year, shall be made by
12 matching the employer's reserve as shown in the reserve column
13 with the corresponding rate in the rate column of the
14 applicable rate schedule of the table provided in Paragraph (4)
15 of this subsection.

16 (2) Each employer's rate for each calendar
17 year commencing January 1, 1979 or thereafter shall be:

18 (a) the corresponding rate in schedule 1
19 of the table provided in Paragraph (4) of this subsection if
20 the fund equals at least three and four-tenths percent of the
21 total payrolls;

22 (b) the corresponding rate in schedule 2
23 of the table provided in Paragraph (4) of this subsection if
24 the fund has dropped to less than three and four-tenths percent
25 and not less than two and seven-tenths percent of the total

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1 payrolls;

2 (c) the corresponding rate in schedule 3
3 of the table provided in Paragraph (4) of this subsection if
4 the fund has dropped to less than two and seven-tenths percent
5 and not less than two percent of the total payrolls;

6 (d) the corresponding rate in schedule 4
7 of the table provided in Paragraph (4) of this subsection if
8 the fund has dropped to less than two percent and not less than
9 one and one-half percent of the total payrolls;

10 (e) the corresponding rate in schedule 5
11 of the table provided in Paragraph (4) of this subsection if
12 the fund has dropped to less than one and one-half percent and
13 not less than one percent of the total payrolls; or

14 (f) the corresponding rate in schedule 6
15 of the table provided in Paragraph (4) of this subsection if
16 the fund has dropped less than one percent of the total
17 payrolls.

18 (3) As used in this section:

19 (a) "annual payroll" means the total
20 amount of remuneration from an employer for employment during a
21 twelve-month period ending on a computation date, and "average
22 payroll" means the average of the last three annual payrolls;

23 (b) "base-period wages" means the wages
24 of an individual for insured work during the individual's base
25 period on the basis of which the individual's benefit rights

1 were determined;

2 (c) "base-period employers" means the
3 employers of an individual during the individual's base period;
4 and

5 (d) "computation date" for each calendar
6 year means the close of business on June 30 of the preceding
7 calendar year.

8 (4) Table of employer reserves and
9 contribution rate schedules:

10 Employer	Contribution	Contribution	Contribution
11 Reserve	Schedule 1	Schedule 2	Schedule 3
12 10.0% and over	0.05%	0.1%	0.6%
13 9.0%- 9.9%	0.1%	0.2%	0.9%
14 8.0%- 8.9%	0.2%	0.4%	1.2%
15 7.0%- 7.9%	0.4%	0.6%	1.5%
16 6.0%- 6.9%	0.6%	0.8%	1.8%
17 5.0%- 5.9%	0.8%	1.1%	2.1%
18 4.0%- 4.9%	1.1%	1.4%	2.4%
19 3.0%- 3.9%	1.4%	1.7%	2.7%
20 2.0%- 2.9%	1.7%	2.0%	3.0%
21 1.0%- 1.9%	2.0%	2.4%	3.3%
22 0.9%- 0.0%	2.4%	3.3%	3.6%
23 (- 0.1%) - (- 0.5%)	3.3%	3.6%	3.9%
24 (- 0.5%) - (- 1.0%)	4.2%	4.2%	4.2%
25 (- 1.0%) - (- 2.0%)	5.0%	5.0%	5.0%

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1	Under (- 2. 0%)	5. 4%	5. 4%	5. 4%
2	Employer	Contri buti on	Contri buti on	Contri buti on
3	Reserve	Schedul e 4	Schedul e 5	Schedul e 6
4	10. 0% and over	0. 9%	1. 2%	2. 7%
5	9. 0%- 9. 9%	1. 2%	1. 5%	2. 7%
6	8. 0%- 8. 9%	1. 5%	1. 8%	2. 7%
7	7. 0%- 7. 9%	1. 8%	2. 1%	2. 7%
8	6. 0%- 6. 9%	2. 1%	2. 4%	2. 7%
9	5. 0%- 5. 9%	2. 4%	2. 7%	3. 0%
10	4. 0%- 4. 9%	2. 7%	3. 0%	3. 3%
11	3. 0%- 3. 9%	3. 0%	3. 3%	3. 6%
12	2. 0%- 2. 9%	3. 3%	3. 6%	3. 9%
13	1. 0%- 1. 9%	3. 6%	3. 9%	4. 2%
14	0. 9%- 0. 0%	3. 9%	4. 2%	4. 5%
15	(- 0. 1%) - (- 0. 5%)	4. 2%	4. 5%	4. 8%
16	(- 0. 5%) - (- 1. 0%)	4. 5%	4. 8%	5. 1%
17	(- 1. 0%) - (- 2. 0%)	5. 0%	5. 1%	5. 3%
18	Under (- 2. 0%)	5. 4%	5. 4%	5. 4%.

19 **I. The division shall promptly notify each employer**
20 **of the employer's rate of contributions as determined for any**
21 **calendar year pursuant to this section. Such notification**
22 **shall include the amount determined as the employer's average**
23 **payroll, the total of all of the employer's contributions paid**
24 **on the employer's behalf and credited to the employer's account**
25 **for all past years and total benefits charged to the employer's**

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1 account for all such years. Such determination shall become
2 conclusive and binding upon the employer unless, within thirty
3 days after the mailing of notice thereof to the employer's last
4 known address or in the absence of mailing, within thirty days
5 after the delivery of such notice, the employer files an
6 application for review and redetermination, setting forth the
7 employer's reason therefor. The employer shall be granted an
8 opportunity for a fair hearing in accordance with rules
9 prescribed by the secretary, but an employer shall not have
10 standing, in any proceeding involving the employer's rate of
11 contributions or contribution liability, to contest the
12 chargeability to the employer's account of any benefits paid in
13 accordance with a determination, redetermination or decision
14 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
15 that the services on the basis of which such benefits were
16 found to be chargeable did not constitute services performed in
17 employment for the employer and only in the event that the
18 employer was not a party to such determination, redetermination
19 or decision, or to any other proceedings under the Unemployment
20 Compensation Law in which the character of such services was
21 determined. The employer shall be promptly notified of the
22 decision on the employer's application for redetermination,
23 which shall become final unless, within fifteen days after the
24 mailing of notice thereof to the employer's last known address
25 or in the absence of mailing, within fifteen days after the

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1 delivery of such notice, further appeal is initiated pursuant
2 to Subsection D of Section 51-1-8 NMSA 1978.

3 J. The division shall provide each contributing
4 employer, within ninety days of the end of each calendar
5 quarter, a written determination of benefits chargeable to the
6 employer's account. Such determination shall become conclusive
7 and binding upon the employer for all purposes unless, within
8 thirty days after the mailing of the determination to the
9 employer's last known address or in the absence of mailing,
10 within thirty days after the delivery of such determination,
11 the employer files an application for review and
12 redetermination, setting forth the employer's reason therefor.
13 The employer shall be granted an opportunity for a fair hearing
14 in accordance with rules prescribed by the secretary, but an
15 employer shall not have standing in any proceeding involving
16 the employer's contribution liability to contest the
17 chargeability to the employer's account of any benefits paid in
18 accordance with a determination, redetermination or decision
19 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
20 that the services on the basis of which such benefits were
21 found to be chargeable did not constitute services performed in
22 employment for the employer and only in the event that the
23 employer was not a party to such determination, redetermination
24 or decision, or to any other proceedings under the Unemployment
25 Compensation Law in which the character of such services was

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1 determined. The employer shall be promptly notified of the
2 decision on the employer's application for redetermination,
3 which shall become final unless, within fifteen days after the
4 mailing of notice thereof to the employer's last known address
5 or in the absence of mailing, within fifteen days after the
6 delivery of such notice, further appeal is initiated pursuant
7 to Subsection D of Section 51-1-8 NMSA 1978.

8 K. The contributions, together with interest and
9 penalties thereon imposed by the Unemployment Compensation Law,
10 shall not be assessed nor shall action to collect the same be
11 commenced more than four years after a report showing the
12 amount of the contributions was due. In the case of a false or
13 fraudulent contribution report with intent to evade
14 contributions or a willful failure to file a report of all
15 contributions due, the contributions, together with interest
16 and penalties thereon, may be assessed or an action to collect
17 such contributions may be begun at any time. Before the
18 expiration of such period of limitation, the employer and the
19 secretary may agree in writing to an extension thereof and the
20 period so agreed on may be extended by subsequent agreements in
21 writing. In any case where the assessment has been made and
22 action to collect has been commenced within four years of the
23 due date of any contribution, interest or penalty, including
24 the filing of a warrant of lien by the secretary pursuant to
25 Section 51-1-36 NMSA 1978, such action shall not be subject to

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1 any period of limitation.

2 L. The secretary shall correct any error in the
3 determination of an employer's rate of contribution during the
4 calendar year to which the erroneous rate applies,
5 notwithstanding that notification of the employer's rate of
6 contribution may have been issued and contributions paid
7 pursuant to the notification. Upon issuance by the division of
8 a corrected rate of contribution, the employer shall have the
9 same rights to review and redetermination as provided in
10 Subsection I of this section.

11 M Any interest required to be paid on advances to
12 this state's unemployment compensation fund under Title 12 of
13 the Social Security Act shall be paid in a timely manner as
14 required under Section 1202 of Title 12 of the Social Security
15 Act and shall not be paid, directly or indirectly, by the state
16 from amounts in the state's unemployment compensation fund. "

17 Section 11. Section 51-1-42 NMSA 1978 (being Laws 1936
18 (S.S.), Chapter 1, Section 19, as amended, and as further
19 amended by Section 5 of this act) is repealed and a new Section
20 51-1-42 NMSA 1978 is enacted to read:

21 "51-1-42. [NEW MATERIAL] DEFINITIONS. -- As used in the
22 Unemployment Compensation Law:

23 A. "base period" means the first four of the last
24 five completed calendar quarters immediately preceding the
25 first day of an individual's benefit year;

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1 B. "benefits" means the cash unemployment
2 compensation payments payable to an eligible individual
3 pursuant to Section 51-1-4 NMSA 1978 with respect to the
4 individual's weeks of unemployment;

5 C. "contributions" means the money payments
6 required by Section 51-1-9 NMSA 1978 to be made into the fund
7 by an employer on account of having individuals performing
8 services for the employer;

9 D. "employing unit" means any individual or type of
10 organization, including any partnership, association,
11 cooperative, trust, estate, joint-stock company, agricultural
12 enterprise, insurance company or corporation, whether domestic
13 or foreign, or the receiver, trustee in bankruptcy, trustee or
14 successor thereof, household, fraternity or club, the legal
15 representative of a deceased person or any state or local
16 government entity to the extent required by law to be covered
17 as an employer, which has in its employ one or more individuals
18 performing services for it within this state. An individual
19 performing services for an employing unit that maintains two or
20 more separate establishments within this state shall be deemed
21 to be employed by a single employing unit for all the purposes
22 of the Unemployment Compensation Law. An individual performing
23 services for a contractor, subcontractor or agent that is
24 performing work or services for an employing unit, as described
25 in this subsection, which is within the scope of the employing

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1 unit's usual trade, occupation, profession or business, shall
2 be deemed to be in the employ of the employing unit for all
3 purposes of the Unemployment Compensation Law unless the
4 contractor, subcontractor or agent is itself an employer within
5 the provisions of Subsection E of this section;

6 E. "employer" includes:

7 (1) an employing unit that:

8 (a) unless otherwise provided in this
9 section, paid for service in employment as defined in
10 Subsection F of this section wages of four hundred fifty
11 dollars (\$450) or more in any calendar quarter in either the
12 current or preceding calendar year or had in employment, as
13 defined in Subsection F of this section, for some portion of a
14 day in each of twenty different calendar weeks during either
15 the current or the preceding calendar year, and irrespective of
16 whether the same individual was in employment in each such day,
17 at least one individual;

18 (b) for the purposes of Subparagraph (a)
19 of this paragraph, if any week includes both December 31 and
20 January 1, the days of that week up to January 1 shall be
21 deemed one calendar week and the days beginning January 1,
22 another such week; and

23 (c) for purposes of defining an
24 "employer" under Subparagraph (a) of this paragraph, the wages
25 or remuneration paid to individuals performing services in

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1 employment in agricultural labor or domestic services as
2 provided in Paragraphs (6) and (7) of Subsection F of this
3 section shall not be taken into account; except that any
4 employing unit determined to be an employer of agricultural
5 labor under Paragraph (6) of Subsection F of this section shall
6 be an employer under Subparagraph (a) of this paragraph so long
7 as the employing unit is paying wages or remuneration for
8 services other than agricultural services;

9 (2) any individual or type of organization
10 that acquired the trade or business or substantially all of the
11 assets thereof, of an employing unit that at the time of the
12 acquisition was an employer subject to the Unemployment
13 Compensation Law; provided that where such an acquisition takes
14 place, the secretary may postpone activating the separate
15 account pursuant to Subsection A of Section 51-1-11 NMSA 1978
16 until such time as the successor employer has employment as
17 defined in Subsection F of this section;

18 (3) an employing unit that acquired all or
19 part of the organization, trade, business or assets of another
20 employing unit and that, if treated as a single unit with the
21 other employing unit or part thereof, would be an employer
22 under Paragraph (1) of this subsection;

23 (4) an employing unit not an employer by
24 reason of any other paragraph of this subsection:

25 (a) for which, within either the current

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1 or preceding calendar year, service is or was performed with
2 respect to which such employing unit is liable for any federal
3 tax against which credit may be taken for contributions
4 required to be paid into a state unemployment fund; or

5 (b) that, as a condition for approval of
6 the Unemployment Compensation Law for full tax credit against
7 the tax imposed by the Federal Unemployment Tax Act, is
8 required, pursuant to that act, to be an "employer" under the
9 Unemployment Compensation Law;

10 (5) an employing unit that, having become an
11 employer under Paragraph (1), (2), (3) or (4) of this
12 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to
13 be an employer subject to the Unemployment Compensation Law;

14 (6) for the effective period of its election
15 pursuant to Section 51-1-18 NMSA 1978, any other employing unit
16 that has elected to become fully subject to the Unemployment
17 Compensation Law;

18 (7) an employing unit for which any services
19 performed in its employ are deemed to be performed in this
20 state pursuant to an election under an arrangement entered into
21 in accordance with Subsection A of Section 51-1-50 NMSA 1978;
22 and

23 (8) an Indian tribe as defined in 26 USCA
24 Section 3306(u) for which service in employment is performed;

25 F. "employment":

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1 (1) means any service, including service in
2 interstate commerce, performed for wages or under any contract
3 of hire, written or oral, express or implied;

4 (2) means an individual's entire service,
5 performed within or both within and without this state if:

6 (a) the service is primarily localized
7 in this state with services performed outside the state being
8 only incidental thereto; or

9 (b) the service is not localized in any
10 state but some of the service is performed in this state and:

11 1) the base of operations or, if there is no base of
12 operations, the place from which such service is directed or
13 controlled, is in this state; or 2) the base of operations or
14 place from which such service is directed or controlled is not
15 in any state in which some part of the service is performed but
16 the individual's residence is in this state;

17 (3) means services performed within this state
18 but not covered under Paragraph (2) of this subsection if
19 contributions or payments in lieu of contributions are not
20 required and paid with respect to such services under an
21 unemployment compensation law of any other state, the federal
22 government or Canada;

23 (4) means services covered by an election
24 pursuant to Section 51-1-18 NMSA 1978 and services covered by
25 an election duly approved by the secretary in accordance with

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1 an arrangement pursuant to Paragraph (1) of Subsection A of
2 Section 51-1-50 NMSA 1978 shall be deemed to be employment
3 during the effective period of the election;

4 (5) means services performed by an individual
5 for an employer for wages or other remuneration unless and
6 until it is established by a preponderance of evidence that:

7 (a) the individual has been and will
8 continue to be free from control or direction over the
9 performance of the services both under the individual's
10 contract of service and in fact;

11 (b) the service is either outside the
12 usual course of business for which the service is performed or
13 that such service is performed outside of all the places of
14 business of the enterprise for which such service is performed;
15 and

16 (c) the individual is customarily
17 engaged in an independently established trade, occupation,
18 profession or business of the same nature as that involved in
19 the contract of service;

20 (6) means service performed after December 31,
21 1977 by an individual in agricultural labor as defined in
22 Subsection Q of this section if:

23 (a) the service is performed for an
24 employing unit that: 1) paid remuneration in cash of twenty
25 thousand dollars (\$20,000) or more to individuals in that

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1 employment during any calendar quarter in either the current or
2 the preceding calendar year; or 2) employed in agricultural
3 labor ten or more individuals for some portion of a day in each
4 of twenty different calendar weeks in either the current or
5 preceding calendar year, whether or not the weeks were
6 consecutive, and regardless of whether the individuals were
7 employed at the same time;

8 (b) the service is not performed before
9 January 1, 1980 by an individual who is an alien admitted to
10 the United States to perform service in agricultural labor
11 pursuant to Sections 214(c) and 101(15)(H) of the federal
12 Immigration and Nationality Act; and

13 (c) for purposes of this paragraph, an
14 individual who is a member of a crew furnished by a crew leader
15 to perform service in agricultural labor for a farm operator or
16 other person shall be treated as an employee of the crew
17 leader: 1) if the crew leader meets the requirements of a crew
18 leader as defined in Subsection L of this section; or 2)
19 substantially all the members of the crew operate or maintain
20 mechanized agricultural equipment that is provided by the crew
21 leader; and 3) the individuals performing the services are not,
22 by written agreement or in fact, within the meaning of
23 Paragraph (5) of this subsection, performing services in
24 employment for the farm operator or other person;

25 (7) means service performed after December 31,

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1 1977 by an individual in domestic service in a private home,
2 local college club or local chapter of a college fraternity or
3 sorority for a person or organization that paid cash
4 remuneration of one thousand dollars (\$1,000) in any calendar
5 quarter in the current or preceding calendar year to
6 individuals performing such services;

7 (8) means service performed after December 31,
8 1971 by an individual in the employ of a religious, charitable,
9 educational or other organization but only if the following
10 conditions are met:

11 (a) the service is excluded from
12 "employment" as defined in the Federal Unemployment Tax Act
13 solely by reason of Section 3306(c)(8) of that act; and

14 (b) the organization meets the
15 requirements of "employer" as provided in Subparagraph (a) of
16 Paragraph (1) of Subsection E of this section;

17 (9) means service of an individual who is a
18 citizen of the United States, performed outside the United
19 States, except in Canada, after December 31, 1971 in the employ
20 of an American employer, other than service that is deemed
21 "employment" under the provisions of Paragraph (2) of this
22 subsection or the parallel provisions of another state's law,
23 if:

24 (a) the employer's principal place of
25 business in the United States is located in this state;

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1 (b) the employer has no place of
2 business in the United States, but: 1) the employer is an
3 individual who is a resident of this state; 2) the employer is
4 a corporation organized under the laws of this state; or 3) the
5 employer is a partnership or a trust and the number of the
6 partners or trustees who are residents of this state is greater
7 than the number who are residents of any one other state; or

8 (c) none of the criteria of
9 Subparagraphs (a) and (b) of this paragraph are met, but the
10 employer has elected coverage in this state or, the employer
11 having failed to elect coverage in any state, the individual
12 has filed a claim for benefits, based on such service, under
13 the law of this state.

14 "American employer" for the purposes of this paragraph
15 means a person who is: 1) an individual who is a resident of
16 the United States; 2) a partnership if two-thirds or more of
17 the partners are residents of the United States; 3) a trust if
18 all of the trustees are residents of the United States; or 4) a
19 corporation organized under the laws of the United States or of
20 any state. For the purposes of this paragraph, "United States"
21 includes the United States, the District of Columbia, the
22 commonwealth of Puerto Rico and the Virgin Islands;

23 (10) means, notwithstanding any other
24 provisions of this subsection, service with respect to which a
25 tax is required to be paid under any federal law imposing a tax

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1 against which credit may be taken for contributions required to
2 be paid into a state unemployment fund or which as a condition
3 for full tax credit against the tax imposed by the Federal
4 Unemployment Tax Act is required to be covered under the
5 Unemployment Compensation Law;

6 (11) means service performed in the employ of
7 an Indian tribe if:

8 (a) the service is excluded from
9 "employment" as defined in 26 USCA Section 3306(c) solely by
10 reason of 26 USCA Section 3306(c)(7); and

11 (b) the service is not otherwise
12 excluded from employment pursuant to the Unemployment
13 Compensation Law;

14 (12) does not include:

15 (a) service performed in the employ of:
16 1) a church or convention or association of churches; or 2) an
17 organization that is operated primarily for religious purposes
18 and that is operated, supervised, controlled or principally
19 supported by a church or convention or association of churches;

20 (b) service performed by a duly
21 ordained, commissioned or licensed minister of a church in the
22 exercise of his ministry or by a member of a religious order in
23 the exercise of duties required by such order;

24 (c) service performed by an individual
25 in the employ of his son, daughter or spouse, and service

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1 performed by a child under the age of majority in the employ of
2 his father or mother;

3 (d) service performed in the employ of
4 the United States government or an instrumentality of the
5 United States immune under the constitution of the United
6 States from the contributions imposed by the Unemployment
7 Compensation Law except that to the extent that the congress of
8 the United States shall permit states to require any
9 instrumentalities of the United States to make payments into an
10 unemployment fund under a state unemployment compensation act,
11 all of the provisions of the Unemployment Compensation Law
12 shall be applicable to such instrumentalities, and to service
13 performed for such instrumentalities in the same manner, to the
14 same extent and on the same terms as to all other employers,
15 employing units, individuals and services; provided that if
16 this state shall not be certified for any year by the secretary
17 of labor of the United States under Section 3304 of the federal
18 Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the
19 payments required of such instrumentalities with respect to
20 such year shall be refunded by the department from the fund in
21 the same manner and within the same period as is provided in
22 Subsection D of Section 51-1-36 NMSA 1978 with respect to
23 contributions erroneously collected;

24 (e) service performed in a facility
25 conducted for the purpose of carrying out a program of

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1 rehabilitation for individuals whose earning capacity is
2 impaired by age or physical or mental deficiency or injury or
3 providing remunerative work for individuals who because of
4 their impaired physical or mental capacity cannot be readily
5 absorbed in the competitive labor market, by an individual
6 receiving that rehabilitation or remunerative work;

7 (f) service with respect to which
8 unemployment compensation is payable under an unemployment
9 compensation system established by an act of congress;

10 (g) service performed in the employ of a
11 foreign government, including service as a consular or other
12 officer or employee or a nondiplomatic representative;

13 (h) service performed by an individual
14 for a person as an insurance agent or as an insurance
15 solicitor, if all such service performed by the individual for
16 the person is performed for remuneration solely by way of
17 commi ssi on;

18 (i) service performed by an individual
19 under the age of eighteen in the delivery or distribution of
20 newspapers or shopping news, not including delivery or
21 distribution to any point for subsequent delivery or
22 distribution;

23 (j) service covered by an election duly
24 approved by the agency charged with the administration of any
25 other state or federal unemployment compensation law, in

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1 accordance with an arrangement pursuant to Paragraph (1) of
2 Subsection A of Section 51-1-50 NMSA 1978 during the effective
3 period of the election;

4 (k) service performed, as part of an
5 unemployment work-relief or work-training program assisted or
6 financed in whole or part by any federal agency or an agency of
7 a state or political subdivision thereof, by an individual
8 receiving the work relief or work training;

9 (l) service performed by an individual
10 who is enrolled at a nonprofit or public educational
11 institution that normally maintains a regular faculty and
12 curriculum and normally has a regularly organized body of
13 students in attendance at the place where its educational
14 activities are carried on as a student in a full-time program,
15 taken for credit at the institution that combines academic
16 instruction with work experience, if the service is an integral
17 part of such program and the institution has so certified to
18 the employer, except that this subparagraph shall not apply to
19 service performed in a program established for or on behalf of
20 an employer or group of employers;

21 (m) service performed in the employ of a
22 hospital, if the service is performed by a patient of the
23 hospital, or services performed by an inmate of a custodial or
24 penal institution for any employer;

25 (n) service performed by real estate

1 salesmen for others when the services are performed for
2 remuneration solely by way of commission;

3 (o) service performed in the employ of a
4 school, college or university if the service is performed by a
5 student who is enrolled and is regularly attending classes at
6 the school, college or university;

7 (p) service performed by an individual
8 for a fixed or contract fee officiating at a sporting event
9 that is conducted by or under the auspices of a nonprofit or
10 governmental entity if that person is not otherwise an employee
11 of the entity conducting the sporting event;

12 (q) service performed for a private,
13 for-profit person or entity by an individual as a product
14 demonstrator or product merchandiser if the service is
15 performed pursuant to a written contract between that
16 individual and a person or entity whose principal business is
17 obtaining the services of product demonstrators and product
18 merchandisers for third parties, for demonstration and
19 merchandising purposes and the individual: 1) is compensated
20 for each job or the compensation is based on factors related to
21 the work performed; 2) provides the equipment used to perform
22 the service, unless special equipment is required and provided
23 by the manufacturer through an agency; 3) is responsible for
24 completion of a specific job and for any failure to complete
25 the job; 4) pays all expenses, and the opportunity for profit

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1 or loss rests solely with the individual; and 5) is responsible
2 for operating costs, fuel, repairs and motor vehicle insurance.
3 For the purpose of this subparagraph, "product demonstrator"
4 means an individual who, on a temporary, part-time basis,
5 demonstrates or gives away samples of a food or other product
6 as part of an advertising or sales promotion for the product
7 and who is not otherwise employed directly by the manufacturer,
8 distributor or retailer, and "product merchandiser" means an
9 individual who, on a temporary, part-time basis builds or
10 resets a product display and who is not otherwise directly
11 employed by the manufacturer, distributor or retailer; or

12 (r) service performed for a private,
13 for-profit person or entity by an individual as a landman if
14 substantially all remuneration paid in cash or otherwise for
15 the performance of the services is directly related to the
16 completion by the individual of the specific tasks contracted
17 for rather than to the number of hours worked by the
18 individual. For the purposes of this subparagraph, "landman"
19 means a land professional who has been engaged primarily in:
20 1) negotiating for the acquisition or divestiture of mineral
21 rights; 2) negotiating business agreements that provide for the
22 exploration for or development of minerals; 3) determining
23 ownership of minerals through the research of public and
24 private records; and 4) reviewing the status of title, curing
25 title defects and otherwise reducing title risk associated with

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1 ownership of minerals; managing rights or obligations derived
2 from ownership of interests and minerals; or utilizing or
3 pooling of interest in minerals; and

4 (13) for the purposes of this subsection, if
5 the services performed during one-half or more of any pay
6 period by an individual for the person employing the individual
7 constitute employment, all the services of the individual for
8 the period shall be deemed to be employment but, if the
9 services performed during more than one-half of any such pay
10 period by an individual for the person employing the individual
11 do not constitute employment, then none of the services of the
12 individual for the period shall be deemed to be employment. As
13 used in this paragraph, the term "pay period" means a period,
14 of not more than thirty-one consecutive days, for which a
15 payment of remuneration is ordinarily made to the individual by
16 the person employing the individual. This paragraph shall not
17 be applicable with respect to services performed in a pay
18 period by an individual for the person employing the individual
19 where any of such service is excepted by Subparagraph (f) of
20 Paragraph (12) of this subsection;

21 G. "employment office" means a free public
22 employment office, or branch thereof, operated by this state or
23 maintained as a part of a state-controlled system of public
24 employment offices;

25 H. "fund" means the unemployment compensation fund

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1 established by the Unemployment Compensation Law to which all
2 contributions and payments in lieu of contributions required
3 under the Unemployment Compensation Law and from which all
4 benefits provided under the Unemployment Compensation Law shall
5 be paid;

6 I. "unemployment" means, with respect to an
7 individual, any week during which the individual performs no
8 services and with respect to which no wages are payable to the
9 individual and during which the individual is not engaged in
10 self-employment or receives an award of back pay for loss of
11 employment. The secretary shall prescribe by rule what
12 constitutes part-time and intermittent employment, partial
13 employment and the conditions under which individuals engaged
14 in such employment are eligible for partial unemployment
15 benefits;

16 J. "state", when used in reference to any state
17 other than New Mexico, includes, in addition to the states of
18 the United States, the District of Columbia, the commonwealth
19 of Puerto Rico and the Virgin Islands;

20 K. "unemployment compensation administration fund"
21 means the fund established by Subsection A of Section 51-1-34
22 NMSA 1978 from which administrative expenses under the
23 Unemployment Compensation Law shall be paid. "Employment
24 security department fund" means the fund established by
25 Subsection B of Section 51-1-34 NMSA 1978 from which certain

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1 administrative expenses under the Unemployment Compensation Law
2 shall be paid;

3 L. "crew leader" means a person who:

4 (1) holds a valid certificate of registration
5 as a crew leader or farm labor contractor under the federal
6 Migrant and Seasonal Agricultural Worker Protection Act;

7 (2) furnishes individuals to perform services
8 in agricultural labor for any other person;

9 (3) pays, either on the crew leader's own
10 behalf or on behalf of such other person, the individuals so
11 furnished by the crew leader for service in agricultural labor;
12 and

13 (4) has not entered into a written agreement
14 with the other person for whom the crew leader furnishes
15 individuals in agricultural labor that the individuals will be
16 the employees of the other person;

17 M "week" means such period of seven consecutive
18 days, as the secretary may by rule prescribe. The secretary
19 may by rule prescribe that a week shall be deemed to be "in",
20 "within" or "during" the benefit year that includes the greater
21 part of such week;

22 N. "calendar quarter" means the period of three
23 consecutive calendar months ending on March 31, June 30,
24 September 30 or December 31;

25 O. "insured work" means services performed for

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1 employers who are covered under the Unemployment Compensation
2 Law;

3 P. "benefit year" with respect to an individual
4 means the one-year period beginning with the first day of the
5 first week of unemployment with respect to which the individual
6 first files a claim for benefits in accordance with Subsection
7 A of Section 51-1-8 NMSA 1978 and thereafter the one-year
8 period beginning with the first day of the first week of
9 unemployment with respect to which the individual next files
10 such a claim for benefits after the termination of the
11 individual's last preceding benefit year; provided that at the
12 time of filing such a claim the individual has been paid the
13 wage required under Paragraph (5) of Subsection A of Section
14 51-1-5 NMSA 1978;

15 Q. "agricultural labor" includes all services
16 performed:

17 (1) on a farm, in the employ of a person, in
18 connection with cultivating the soil or in connection with
19 raising or harvesting an agricultural or horticultural
20 commodity, including the raising, shearing, feeding, caring
21 for, training and management of livestock, bees, poultry and
22 fur-bearing animals and wildlife;

23 (2) in the employ of the owner or tenant or
24 other operator of a farm, in connection with the operation,
25 management, conservation or maintenance of the farm and its

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1 tools and equipment, if the major part of the service is
2 performed on a farm;

3 (3) in connection with the operation or
4 maintenance of ditches, canals, reservoirs or waterways used
5 exclusively for supplying and storing water for farming
6 purposes when such ditches, canals, reservoirs or waterways are
7 owned and operated by the farmers using the water stored or
8 carried therein; and

9 (4) in handling, planting, drying, packing,
10 packaging, processing, freezing, grading, storing or delivery
11 to storage or to market or to a carrier for transportation to
12 market any agricultural or horticultural commodity but only if
13 the service is performed as an incident to ordinary farming
14 operations. The provisions of this paragraph shall not be
15 deemed to be applicable with respect to service performed in
16 connection with commercial canning or commercial freezing or in
17 connection with any agricultural or horticultural commodity
18 after its delivery to a terminal market for distribution for
19 consumption.

20 As used in this subsection, the term "farm" includes
21 stock, dairy, poultry, fruit, fur-bearing animal and truck
22 farms, plantations, ranches, nurseries, greenhouses, ranges and
23 orchards;

24 R. "payments in lieu of contributions" means the
25 money payments made into the fund by an employer pursuant to

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1 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or
2 Subsection E of Section 51-1-59 NMSA 1978;

3 S. "department" means the labor department; and

4 T. "wages" means all remuneration for services,
5 including commissions and bonuses and the cash value of all
6 remuneration in any medium other than cash. The reasonable
7 cash value of remuneration in any medium other than cash shall
8 be established and determined in accordance with rules
9 prescribed by the secretary; provided that the term "wages"
10 shall not include:

11 (1) subsequent to December 31, 1977, that part
12 of the remuneration in excess of the base wage as determined by
13 the secretary for each calendar year. The base wage upon which
14 contribution shall be paid during any calendar year shall be
15 sixty percent of the state's average annual earnings computed
16 by the division by dividing total wages reported to the
17 division by contributing employers for the second preceding
18 calendar year before the calendar year the computed base wage
19 becomes effective by the average annual employment reported by
20 contributing employers for the same period rounded to the next
21 higher multiple of one hundred dollars (\$100); provided that
22 the base wage so computed for any calendar year shall not be
23 less than seven thousand dollars (\$7,000). Wages paid by an
24 employer to an individual in his employ during any calendar
25 year in excess of the base wage in effect for that calendar

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1 year shall be reported to the department but shall be exempt
2 from the payment of contributions unless such wages paid in
3 excess of the base wage become subject to tax under a federal
4 law imposing a tax against which credit may be taken for
5 contributions required to be paid into a state unemployment
6 fund;

7 (2) the amount of any payment with respect to
8 services performed after June 30, 1941 to or on behalf of an
9 individual in the employ of an employing unit under a plan or
10 system established by the employing unit that makes provision
11 for individuals in its employ generally or for a class or
12 classes of individuals, including any amount paid by an
13 employing unit for insurance or annuities, or into a fund, to
14 provide for any payment, on account of:

15 (a) retirement if the payments are made
16 by an employer to or on behalf of an employee under a
17 simplified employee pension plan that provides for payments by
18 an employer in addition to the salary or other remuneration
19 normally payable to the employee or class of employees and does
20 not include any payments that represent deferred compensation
21 or other reduction of an employee's normal taxable wages or
22 remuneration or any payments made to a third party on behalf of
23 an employee as part of an agreement of deferred remuneration;

24 (b) sickness or accident disability if
25 the payments are received under a workers' compensation or

underscored material = new
[bracketed material] = delete

1 occupational disease disablement law;

2 (c) medical and hospitalization expenses
3 in connection with sickness or accident disability; or

4 (d) death; provided the individual in
5 its employ has not the option to receive, instead of provision
6 for the death benefit, any part of such payment, or, if such
7 death benefit is insured, any part of the premiums or
8 contributions to premiums paid by the individual's employing
9 unit and has not the right under the provisions of the plan or
10 system or policy of insurance providing for the death benefit
11 to assign the benefit, or to receive a cash consideration in
12 lieu of the benefit either upon the individual's withdrawal
13 from the plan or system providing for the benefit or upon
14 termination of the plan or system or policy of insurance or of
15 the individual's service with the employing unit;

16 (3) remuneration for agricultural labor paid
17 in any medium other than cash;

18 (4) a payment made to, or on behalf of, an
19 employee or an employee's beneficiary under a cafeteria plan
20 within the meaning of Section 125 of the federal Internal
21 Revenue Code of 1986;

22 (5) a payment made, or benefit furnished to or
23 for the benefit of an employee if at the time of the payment or
24 such furnishing it is reasonable to believe that the employee
25 will be able to exclude the payment or benefit from income

. 142980. 3

underscored material = new
[bracketed material] = delete

1 under Section 129 of the federal Internal Revenue Code of 1986;

2 (6) a payment made by an employer to a
3 survivor or the estate of a former employee after the calendar
4 year in which the employee died;

5 (7) a payment made to, or on behalf of, an
6 employee or the employee's beneficiary under an arrangement to
7 which Section 408(p) of the federal Internal Revenue Code of
8 1986 applies, other than any elective contributions under
9 Paragraph (2)(A)(i) of that section;

10 (8) a payment made to or for the benefit of an
11 employee if at the time of the payment it is reasonable to
12 believe that the employee will be able to exclude the payment
13 from income under Section 106 of the federal Internal Revenue
14 Code of 1986; or

15 (9) the value of any meals or lodging
16 furnished by or on behalf of the employer if at the time the
17 benefit is provided it is reasonable to believe that the
18 employee will be able to exclude such items from income under
19 Section 119 of the federal Internal Revenue Code of 1986."

20 Section 12. APPROPRIATION.--Two million three hundred
21 ninety-two thousand four hundred one dollars (\$2,392,401) is
22 appropriated from the Reed Act distribution fund, consisting of
23 funds made available to the state of New Mexico pursuant to the
24 Economic Security and Recovery Act of 2001 and Section 903 of
25 the Social Security Act, as amended, to the unemployment

. 142980. 3

underscored material = new
[bracketed material] = delete

1 compensation administration fund for expenditure in fiscal
2 years 2004 through 2007 to implement the provisions of this
3 act. Any unexpended or unencumbered balance remaining at the
4 end of fiscal year 2007 shall revert to the Reed Act
5 distribution fund.

6 Section 13. REPEAL. --Laws 2000, Chapter 3, Sections 1 and
7 2 are repealed.

8 Section 14. EFFECTIVE DATE. --

9 A. The effective date of the provisions of Section
10 12 of this act is April 1, 2003.

11 B. The effective date of the provisions of Sections
12 2, 3 and 5 of this act is January 1, 2004.

13 C. The effective date of the provisions of Sections
14 7 through 11 of this act is the earliest of the following:

15 (1) June 30, 2007; or

16 (2) the date that the unemployment
17 compensation fund is less than three and three-fourths percent
18 of total payrolls pursuant to the computation provided in
19 Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

20 Section 15. EMERGENCY. --It is necessary for the public
21 peace, health and safety that this act take effect immediately.

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